RAIN FUTURES ACT

HEARINGS

BEFORE THE

OMMITTEE ON AGRICULTURE

HOUSE OF REPRESENTATIVES

SIXTY-SEVENTH CONGRESS

SECOND SESSION

JUNE 7, 8, 9, AND 12, 1922

Series CC

WASHINGTON
GOVERNMENT PRINTING OFFICE
09705 1922

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HOUSE OF REPRESENTATIVES.

SIXTY-SEVENTH CONGRESS, SECOND SESSION.

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GRAIN FUTURES ACT.

COMMITTEE ON AGRICULTURE,
HOUSE OF REPRESENTATIVES,
Wednesday, June 7, 1922.

The committee met at 10 o'clock a. m., Hon. Gilbert N. Haugen (chairman) presiding.

There were present: Mr. Haugen, Mr. McLaughlin of Michigan, Mr. Purnell, Mr. Voigt, Mr. McLaughlin of Nebraska, Mr. Riddick, Mr. Tincher, Mr. Williams, Mr. Hays, Mr. Thompson, Mr. Gernerd, Mr. Clague, Mr. Clarke, Mr. Rainey, Mr. Aswell, Mr. Kincheloe, Mr. Jones, and Mr. Ten Eyck.

The CHAIRMAN. The committee has met this morning to give consideration to the subject of future trading. The Chair lays before the committee H. R. 11843. We will first hear from representatives of the department.

Mr. TINCHER. Yes; that is my understanding.

The CHAIRMAN. Mr. Morrill, we will be pleased to hear you now.

STATEMENT OF MR. CHESTER MORRILL, ASSISTANT TO THE SECRETARY OF AGRICULTURE, IN CHARGE OF ADMINISTRATION OF GRAIN FUTURES TRADING ACT.

Mr. MORRILL. Mr. Chairman, I do not know how far you wish me to go into the subject of the pending bill or just how much you wish in the way of information from me. If you would indicate the line you want me to follow I will try to do that.

Mr. TINCHER. Mr. Chairman, may I suggest that when we agreed the other day to call Mr. Morrill, it was my understanding that what we wanted to do was to go into the question of the legality of the bill and have him explain any changes between this bill and the former legislation. I think the committee understands the legislative status of this matter.

Mr. CLARKE. I would like him to go quite a little ways further than that. I would like to know just exactly what your interpretation is of the Supreme Court decision, from your viewpoint, and have you indicate just what was eliminated from the old bill.

Mr. TINCHER. I supposed that would be covered in a discussion of the legality of the proposed bill.

Mr. ASWELL. What is the new part of the bill?

Mr. MORRILL. I can indicate that as I go along.

Mr. ASWELL. Are you going clear through the bill again?

Mr. CLARKE. What I read into the decision and what somebody else may read into it may be materially different.

Mr. JONES. I suppose you have framed in your own mind your method of treating this subject, have you not?

Mr. MORRILL. Yes.

The CHAIRMAN. Have you in mind to take the bill up section by section and point out the changes and discuss the question of its legality?

Mr. MORRILL. I can answer the question as to the decision of the Supreme Court first, if you wish, and then take up the differences between the Capper-Tincher bill and the new Capper-Tincher bill.

The CHAIRMAN. Would you prefer to make your statement without being interrupted?

Mr. MORRILL. I think I can go right along but, of course, I am perfectly willing to answer any questions you may desire to ask.

The CHAIRMAN. I think the committee would leave it to you to decide whatever you desire to do in the matter.

Mr. MORRILL. The law which was before the Supreme Court was based upon the taxing power of Congress and provided for two separate taxes, one covered by section 3 on puts and calls and other similar transactions, and the other tax provided by section 4 on the general class of future trading that we know as futures.

The question directly before the Supreme Court was in regard to the constitutionality of section 4 and the interrelated provisions of the books which were placed there for the purpose of carrying out the general idea behind section 4. The Supreme Court held that section 4 and all the related provisions of a regulatory character are unconstitutional. It, however, did not hold section 3 to be unconstitutional because section 3 was confined to a tax and had no regulatory provisions except in so far as it might be necessary for the Treasury Department to take action to carry out the taxing provisions.

Mr. CLARKE. May I interrupt you just there? One of the great objects, as I understood it, presented here at the time and one of the reasons for this bill was that when the Government had undertaken to run down corners in wheat and grain and other things heretofore, they never had been able to obtain the information because a great many of the transactions were verbal or the records were destroyed. Now, under the decision of the Supreme Court, that part of the law still stands, does it not?

Mr. MORRILL. The decision of the Supreme Court takes away from the Secretary of Agriculture the power to compel an exchange or its members to make any report or to open up its records because those provisions were for the purpose of carrying out section 4 and were regulatory in character, in the opinion of the Supreme Court.

Mr. GERNERD. Just why did the Supreme Court say that the Department of Agriculture could not carry out the purpose of section 4? I have the opinion before me, but I want your viewpoint.

Mr. MORRILL. Speaking with reference to the bill which was before the court, they held that it was manifestly passed in the belief by Congress that it could be carried out under the taxing power and there was no evidence in the bill of an intention to exercise any other power, such as the interstate commerce power, and in the absence of a declared intention in the bill or any language showing the intention to exercise some other power, the Supreme Court would not write that into the bill.

Mr. GERNERD. Therefore it declared this section unlawful just because of the taxing feature.

Mr. MORRILL. Just because it was under the taxing power.

Mr. GERNERD. Now, if we were to substitute for that the same provisions that are given to the interstate commerce work, it would declare the same to be constitutional; in other words, that is the inference to be drawn.

Mr. MORRILL. There are certain inferences in the opinion to which I will later refer.

Mr. KINCHELOE. Right there, let me get this question clear in my own mind. Of course, the Supreme Court decides this act unconstitutional because of the taxing power, and the present bill, as drawn here, undertakes to get around that and you have undertaken to draw a bill that will be constitutional by regulating interstate commerce.

Mr. MORRILL. Yes, sir.

Mr. KINCHELOE. Now, subsection a of section 2 of this bill undertakes to define interstate commerce. Is that the same provision, in substance, as was used to define interstate commerce in the packers' bill?

Mr. MORRILL. Yes, sir.

Mr. KINCHELOE. That is what I thought, and that is the reason I asked the question.

Mr. JONES. Let me ask you a question right there, while you are on that subject. Is it your opinion that Congress by virtue of the power that is granted to it to regulate interstate commerce has the power to prohibit interstate commerce?

Mr. MORRILL. No, sir; I am not taking that position, and this bill is not a prohibitory bill.

Mr. JONES. I am asking this question for information: I understand here that section 4 starts off with an absolute prohibition except and unless they will comply with certain things and conditions. Now, is not that an effort to prohibit interstate commerce entirely?

Mr. MORRILL. No; it is merely expressed by way of prohibition in order to secure regulation. A great many laws passed under the interstate commerce power declare certain things unlawful, which amount to a prohibition, but it is solely for the purpose of regulating interstate commerce, after all.

Mr. JONES. Of course, if the court, in construing this, pursued the same line of reasoning they did in the case here. they would hold that.

Mr. MORRILL. If I may, I would like to go on and point out certain things in the decision of the Supreme Court which throw light on this matter of the use of the commerce power, and it must be borne in mind that when I answered the question about the definition of interstate commerce, I am not taking the position that these transactions on the board of trade are in themselves interstate commerce. I will explain that remark more fully.

Mr. JONES. How are you going to connect them up?

Mr. MORRILL. In the decision of the Supreme Court, it called attention to certain language in the caption of the bill which was declared unconstitutional where they used the words, providing for the regulation of boards of trade, and called attention to the fact that the other provisions incidental to section 4 seemed to be wholly for the purpose of regulation, and in the opinion of the Supreme Court the bill showed on its face that the use of the taxing power was an incident instead of the main purpose of the bill.

In discussing the subject, I am going to merely quote certain sentences in the opinion. Of course, the whole opinion is available.

The Supreme Court said:

"It is impossible to escape the conviction"——

The CHAIRMAN (interposing). What are you reading from?

Mr. MORRILL. I am reading from the decision of the Supreme Court on page 8 of the pamphlet.

Mr. JONES. The last paragraph on page 8.

Mr. MORRILL (reading):

"It is impossible to escape the conviction, from a full reading of this law, that it was enacted for the purpose of regulating the conduct of business of boards of trade"—

Then I will skip a little bit—

"Indeed, the title of the act recites that one of its purposes is the regulation of boards of trade."

Then dropping down a little bit further:

"The manifest purpose of the tax is to compel boards of trade to comply with regulations, many of which can have no relevancy to the collection of the tax at all."

Then the Supreme Court goes on——

Mr. JONES. Just in that connection, does this present bill undertake to require any conditions that have no relevancy to interstate commerce?

Mr. MORRILL. We think not, but that is a matter that can be considered, and there is one that I will mention when I come to analyze the bill.

Going on, the Supreme Court referred to the child-labor case and to other cases involving the taxing power, including the Veazie Bank case, involving State-bank notes, and the Oleomargarine case, and said:

"It was pointed out that in none of those cases did the law objected to show on its face, as did the child-labor tax law, detailed regulation of a concern or business wholly within the police power of the State."

Then the Supreme Court says:

"We come to the question, then, Can these regulations of boards of trade by Congress be sustained under the commerce clause of the Constitution? Such regulations are held to be within the police powers of the State. * * * There is not a word in the act from which it can be gathered that it is confined in its operation to interstate commerce. * * * Looked at in this aspect and without any limitation of the application of the tax to interstate commerce or to that which the Congress may deem from evidence before it to be an obstruction to interstate commerce, we do not find it possible to sustain the validity of the regulations as they are set forth in this act."

So you will see that the Supreme Court was plainly indicating that there was a field for consideration that had not been covered by the bill that was declared unconstitutional.

Now, the Supreme Court refers to the case of Ware & Leland *v.* Mobile County (209 U. S. 405), which involved a State tax upon transactions, and the State tax was upheld because the transactions themselves were not interstate commerce and because there was involved the question of a State tax.

Now, the Supreme Court expressly says:

"It follows that sales for future delivery on the board of trade are not in and of themselves interstate commerce. They can not come within the regulatory power of Congress as such, unless they are regarded by Congress, from the evidence before it, as directly interfering with interstate commerce so as to be an obstruction or a burden thereon." Referring to the case of United States *v.* Ferger (250 U. S. 199).

Later, the court goes on to say, referring to the Patten case (226 U. S. 525), involving cotton transactions on the New York Cotton Exchange, that "mere contracts for sales of cotton for future delivery which did not oblige interstate shipments were not interstate commerce, an indictment charging the defendants with having cornered the whole cotton market of the United States by excessive purchases of cotton for future delivery and thus conspired to restrain, obstruct, and monopolize interstate commerce in cotton, was sustained under the first and second sections of the Sherman antitrust law. This case like Stafford *v.* Wallace—which is the Packers and Stockyards case—followed the principles of Swift & Company *v.* United States (196 U. S. 375). In that case is found the origin of the definition of commerce contained in the packers and stockyards act.

Speaking directly with reference to what was held to be constitutional and unconstitutional in this bill, the Supreme Court said, on page 13:

"There are sections of the act to which under section 11 the reasons for our conclusion as to section 4 and the interwoven regulations do not apply. Such is section 9 authorizing investigations by the Secretary of Agriculture and his publication of results. Section 3, too, would not seem to be affected by our conclusion."

Mr. KINCHELOE. On those points you have put the same sections in this bill that were in the other bill?

Mr. MORRILL. Yes; as nearly as possible.

Then you will notice the court goes on and makes another statement referring to section 3:

"This is the imposition of an excise tax upon certain transactions of a unilateral character in grain markets which approximate gambling or offer full opportunity for it and does not seem to be associated with section 4. Such a tax without more would seem to be within the congressional power."

I think that gives the pertinent pints in the decision of the Supreme Court on the future trading act.

In the packers and stockyards decision—and in referring to the packers and stockyards decision I do not mean to imply that the proposed regulation of the future exchanges is strictly comparable with the packers and stockyards case, because there is quite a fundamental and essential difference between the two, still there are certain statements made in the packers and stockyards decision that have a bearing upon the matter before you.

The court says, on page 8, the first full paragraph:

"The object to be secured by the act is the free and unburdened flow of livestock from the ranges and farms from the West and the Southwest through the great stockyards and slaughtering centers on the borders of that region and thence in the form of meat products to the consuming cities of the country in the Middle West and East, or, still as live stock, to the feeding places and fattening farms in the Middle West or East for further preparation for the market."

Now, the court goes on and refers to the things that were in the minds of Congress about the regulation under the packers and stockyards' act and said:

"The chief evil is the monopoly of the packers enabling them unduly and arbitrarily to lower prices to the shipper who sells and unduly and arbitrarily to increase the price to the consumer who buys. Congress thought that the power to maintain this monopoly was aided by control of the stockyards. Another evil which it sought to provide against by the act, was exorbitant charges, duplications of commissions, deceptive practices in respect of prices, in the passage of the live stock through the stockyards, all made possibly by collusion between the stockyards management and the commission men on the one hand, and the packers and dealers on the other. Expenses incurred in the passage through the stockyards necessarily reduce the price received by the shipper and increase the price to be paid by the consumer. If they be exorbitant or unreasonable they are an undue burden on the commerce which the stockyards are intended to facilitate. Any unjust or deceptive practice or combination

that unduly and directly enhances them is an unjust obstruction to that commerce."

Mr. KINCHELOE. Of course, Mr. Morrill, you have in mind in reading this, its relativity to the interstate commerce provision of your new bill.

Mr. MORRILL. Yes, sir. The Supreme Court, you will notice in the packers and stockyards' case, did not necessarily hold that the transactions of commission men in the stockyards were in themselves interstate commerce, but it bases its reasoning upon the relationship of those transactions to interstate commerce; and the court goes on to say—and this is pertinent right here—referring to the antitrust laws and particularly to the Swift case, which was decided under the antitrust laws, reading from page 12:

"The language of the law shows that what Congress had in mind primarily was to prevent such conspiracies by supervision of the agencies which would be likely to be employed in it. If Congress could provide for punishment or restraint of such conspiracies after their formation through the antitrust law as in the Swift case, certainly it may provide regulations to prevent their formation."

Then on page 13:

"Whatever amounts to more or less constant practice and threatens to obstruct or unduly to burden the freedom of interstate commerce is within the regulatory power of Congress under the commerce clause."

Mr. KINCHELOE. Your idea is that inasmuch as they hold in the Packers and Stockyards' case that all the transactions in the stockyards are not interstate commerce, by the same analogy or reasoning, the provisions of the present bill would not be vitiated by the Supreme Court because of the fact that some of the transactions on the grain exchange are not necessarily interstate commerce.

Mr. MORRILL. Yes. The Supreme Court has expressly held that transactions on the cotton exchanges are not interstate commerce, but it upheld the indictment in the Patten case on the ground that there was an obstruction to interstate commerce through the operations of Patten and others on the future exchanges, and at the end of the decision in the Packers and Stockyards' case, the court said, speaking about the act:

"Its provisions are carefully drawn to apply only to those practices and obstructions which in the judgment of Congress are likely to affect interstate commerce prejudicially. Thus construed and applied, we think the act clearly within the congressional power and valid."

Mr. CLARKE. How are you going to differentiate between the practices that are and the practices that are not within the purview of the law?

Mr. MORRILL. That will depend upon the opinion of Congress as to what things in the past have been conducive to disadvantage to interstate commerce in grain.

Mr. CLARKE. You will surely have to go further than the mere opinion of Congress on the matter.

Mr. MORRILL. Of course, the opinion of Congress must be based upon——

Mr. CLARKE. The opinion of Congress was expressed in the other law, and we all made ourselves foolish on that.

Mr. MORRILL. The opinion of Congress must be based upon facts, and your committee has held hearing after hearing. You have 1,000 pages of record on the subject.

Mr. CLARKE. More than that.

Mr. MORRILL. Now, I have read certain extracts from the decision in the future trading case and the Packers and Stockyards case. There are certain cases mentioned in those decisions and also some not mentioned in those decisions which I think should be directed to your attention.

Mr. KINCHELOE. Your idea is that if the provisions of the packers' act are drawn to apply only to those practices and obstructions which, in the judgment of Congress, are likely to affect interstate commerce, that provisions relative to grain can be drawn in the same way.

Mr. MORRILL. Well, not in the same way, but on the same general plan.

Mr. KINCHELOE. Yes; I did not mean in exactly the same way, but on the same basis.

Mr. MORRILL. Yes; and I am making the point that if the Supreme Court could indict Patten and others for cornering the market on the New York Cotton Exchange by using transactions which admittedly are not in themselves interstate commerce, it can provide for the regulation of those transactions in advance so that an indictment will not become necessary.

Mr. CLARKE. What is the citation to the Patten case?

Mr. MORRILL. Two hundred and twenty-sixth United States, 525.

In the Minnesota Rate cases (230 U. S. 352), at page 399, the court said:

"The authority of Congress extends to every part of interstate commerce and to every instrumentality and agency by which it is carried on; and the full control by Congress of the subjects committed to its regulation is not to be denied or thwarted by the commingling of interstate and intrastate operations. This is not to say that the Nation may deal with the internal concerns of the State as such, but that the execution by Congress of its constitutional power to regulate interstate commerce is not limited by the fact that intrastate transactions may have become so interwoven therewith that the effective government of the former incidentally controls the latter. This conclusion necessarily results from the supremacy of the national power within its appointed sphere."

Then in the case of United States *v.* Ferger (250 U. S. 199), in speaking about a fraudulent and fictitious bill of lading, the court said:

"But this mistakenly assumes that the power of Congress is to be necessarily tested by the intrinsic existence of commerce in the particular subject dealt with, instead of by relation of that subject to commerce and its effect upon it. We say mistakenly assumes because we think it clear that if the proposition were sustained it would destroy the power of Congress to regulate, as obviously that power, if it is to exist, must include the authority to deal with obstructions to interstate commerce (In re Debs, 158 U. S. 564) and with a host of other acts which, because of their relation to and influence upon interstate commerce, come within the power of Congress to regulate, although they are not interstate commerce in and of themselves."

The case I was going to read from next was a case in a lower Federal court, but it is along the same general line of the Supreme Court decision which I have read.

Mr. CLARKE. Just put in the citation.

Mr. MORRILL. Knauer *v.* United States (237 Fed. 8, 12). I can read the citation because it is brief.

"The act in question does not require that the defendants shall have been engaged in interstate commerce. If they were all engaged exclusively in intrastate commerce, and they formed a conspiracy to restrain the trade of the manufacturers and wholesalers who were engaged in interstate commerce, that would make them guilty."

Mr. MCLAUGHLIN of Michigan. What court was that?

Mr. MORRILL. I do not have a reference to the particular court, but it was a lower Federal court.

Mr. MCLAUGHLIN of Michigan. And the decision was not appealed from?

Mr. MORRILL. No.

Mr. MCLAUGHLIN of Michigan. So the case never reached the Supreme Court?

Mr. MORRILL. No; that is the reason I simply referred to it and do not attach any importance to it.

Now, I might mention the Clayton Act. Section 3 of the Clayton Act, among other things, makes it unlawful for persons engaged in interstate commerce, in the course of such commerce, to lease, sell, or contract for the sale of machinery, goods, wares, etc., for use in the United States, or to fix or discount the price upon condition that the lessee or purchaser shall not use machinery or supplies of a competitor where the effect of such lease, contract, agreement, or understanding may be to substantially lessen competition or tend to create a monopoly. In the recent case of United Shoe Machinery Corporation *v.* United States (advance sheets, 42 Sup. Ct., pp. 363, 368), arising under that act, the court said:

"It is insisted that the leases in controversy were not made in the course of interstate commerce, and therefore can not be embraced within the terms of the Clayton Act. It is provided in the decree that it shall apply to all leases covering shoe machinery shipped from one State to the user or factory for use in another State in the course of or as a part of the transaction between the lessor and the lessee, resulting in the making of the lease. It is true that the mere making of the lease of the machine is not of itself interstate commerce. But where, connected with the making of such a lease, a movement of goods in interstate commerce is required, we have no doubt of the authority and purpose of Congress to control the making of such leases by the enactment of the statute before us."

Mr. KINCHELOE. That case in the lower court that you read from is rather interesting to me. Have you found, in your investigation and in running down these citations, where the Supreme Court has ever held that where two or more conspired to manipulate the market or to raise the prices to the prejudice of those who are engaged in like business in interstate commerce, that they are subject to indictment in a Federal court?

Mr. MORRILL. I can not give you the citations at the moment, because I have not had the time to run through these matters.

Mr. TINCHER. They held that straight out in the cotton exchange case.

Mr. KINCHELOE. In what case?

Mr. TINCHER. When Patten was indicted under the cotton futures act.

Mr. KINCHELOE. I have not read that case, and I did not know about it.

Mr. MORRILL. The Patten case I refer to, because it seems to me very pertinent.

Mr. JONES. In that case there was a direct purpose to interfere with interstate commerce. That is what they intended to do.

Mr. MORRILL. Probably so.

Mr. JONES. In other words, that is what the courts concluded.

Mr. MORRILL. Yes; they concluded that from the effect.

Mr. KINCHELOE. Were the facts involved in the cotton exchanges case the same as those involved in the case referred to here in the lower courts?

Mr. JONES. No; I think the one he cited goes further than the Patten case.

Mr. MORRILL. May I say that in the course of my work in the department now, I do not have as much time as I used to have to go into legal decisions. My work is largely administrative now, and Mr. Lees, of the solicitor's offices, who is assistant to the solicitor, has gotten for me a number of these citations, and, as a matter of fact, has been making a pretty thorough study of the law, with the idea that he would be able to give a rather comprehensive résumé of the legal decisions.

Mr. CLARKE. Then how do you happen to be here instead of Mr. Lees on this matter?

Mr. MORRILL. Because Mr. Lees is a member of the office of the solicitor of the department, which handles only legal matters, and I was placed in charge of the administration of the future trading act. I was formerly a member of the solicitor's office.

Mr. CLARKE. You are the one designated by the Secretary of Agriculture.

Mr. MORRILL. Yes, sir.

Mr. TINCHER. Mr. Morrill, let us have a little of the history of the preparation of this bill, just for the benefit of the committee. You have been with the Department of Agriculture how long?

Mr. MORRILL. I have been with the Department of Agriculture for seven years.

Mr. TINCHER. And up until Mr. Wallace's term, you were in what department?

Mr. MORRILL. I was first in the solicitor's office until in 1919, when I was appointed supervisor of the enforcement of the United States cotton futures act. Then I became assistant to the chief of the Bureau of Markets, and subsequently assistant chief, and at the time of the passage of the packers and stockyards act and the future trading act, the Secretary placed me in charge of the administration of those two laws.

Mr. TINCHER. In the preparation of this bill, how long a time did you take to work out this constitutional question?

Mr. MORRILL. Of course, it has been constantly before us ever since the initiation of the proceeding by Mr. Hill at Chicago to test the constitutionality of the future trading act. Naturally we saw the weakness of the bill from a legal standpoint, and we have given a good deal of attention to just how that weakness might be overcome, either in the case itself or subsequently.

Mr. TINCHER. Then after the Taft decision and after I asked your department to go to work on it, how long a time did your legal department spend in preparing this bill?

Mr. MORRILL. They have been giving pretty close attention to it and in addition we have discussed these legal questions with the legislative drafting service of the House, and they are in accord with our views on the legal phases.

Mr. TINCHER. Now, tell the committee whom you have in your legal department.

Mr. CLARKE. Is that the same legislative drafting service that prepared this other act that was declared unconstitutional?

Mr. MORRILL. Yes.

Mr. TINCHER. Oh, no; let us get the record straight on that. The legislative drafting service prepared the packer control act but they did not prepare the future trading act.

Mr. MORRILL. The future trading act was not prepared by the legislative drafting service nor by the Agricultural Department.

Mr. KINCHELOE. But the packer control act was.

Mr. MORRILL. Yes.

Mr. TINCHER. What lawyers are there in your legal department?

Mr. MORRILL. We have about 25 in Washington, have we not, Mr. Lees?

Mr. LEES. About that many.

Mr. MORRILL. And probably 15 or 20 outside.

Mr. TINCHER. Who is the solicitor for the department?

Mr. MORRILL. The solicitor is Mr. Williams.

Mr. TINCHER. Did Judge Hiner go over this bill with you?

Mr. MORRILL. Judge Hiner has nothing to do with the administration of the future trading act. He is connected with the packers and stockyards administration.

Mr. TINCHER. He had considerable to do with the trial of the case, did he not?

Mr. MORRILL. Not with the future trading case.

Mr. TINCHER. I mean with the packers and stockyards case.

Mr. MORRILL. With the packers and stockyards case, yes.

Mr. KINCHELOE. When it suits you to do so, I would like for you to take up this new bill and discuss it section by section and explain to us why it will get around this decision of the Supreme Court on the future trading act.

Mr. MORRILL. Taking the title of H. R. 11843 and comparing it with the title of the future trading act, you will find a distinct difference. The title is entirely changed. It reads: "For the prevention and removal of obstructions and burdens upon interstate commerce in grain, by regulating transactions on grain future exchanges and for other purposes."

Mr. KINCHELOE. I think you had better quote the title of the old act.

Mr. MORRILL. The title of the old act is as follows:

"An act taxing contracts for the sale of grain for future delivery and options for such contracts, and providing for the regulation of boards of trade, and for other purposes."

May I say that in going over the substitute bill, as a means of serving the committee, we adhered as closely as possible to the future trading act, with the exceptions to which I will call attention as I go along.

Mr. CLARKE. The first exception, then, is in the title; is that it?

Mr. MORRILL. Yes. In the first section, immediately following the title of the bill, you will notice that the short title is changed to "The grain futures act," instead of the "Future trading act," merely as a means of providing a distinction between the title of the bill which was declared unconstitutional and the new one.

Mr. KINCHELOE. What would be the difference between the two?

Mr. MORRILL. It is just a matter of reference.

Mr. KINCHELOE. I had the idea that you had drawn this bill with the idea of trying to get around the objections raised to the original act by the Supreme Court, and I was wondering what was the difference between the grain futures act and the future trading act.

Mr. MORRILL. It is purely a question of title. It must be borne in mind, however, that the future trading act does not make the distinction that is made in this bill. It is limited to grain futures and does not apply to cotton futures or to any futures outside of grain.

Now, in section 2a, the language is the same down to line 14 on page 2, and from thereon the material is new in the section and was not contained in the future trading act. I will read it in order to get it before you:

"The words 'interstate commerce' shall be construed to mean commerce between any State, Territory, or possession, or the District of Columbia, and any place outside thereof; or between points within the same State, Territory, or possession, or the District of Columbia, but through any place outside thereof, or within any Territory or possession or the District of Columbia."

Now, that is exactly the same as the definition, so far, in the packers and stockyards act, except we use the word "interstate commerce" instead of the word "commerce."

The CHAIRMAN. Mr. Morrill, did I understand you to say that the department drafted the packer bill?

Mr. MORRILL. No; the packer bill, I take it, is not the product of any one person.

The CHAIRMAN. This committee gave about 40 days' hearings to that bill. We had the legislative drafting service of the House here and we had the assistance of you and others from your department.

Mr. MORRILL. I understand that the legislative drafting service was of a great deal of assistance to your committee.

Mr. TINCHER. I understood the only reference he made to the legislative drafting service was that that service was used on the packer bill and was consulted about legal phases of the present bill.

The CHAIRMAN. The packer bill is not the product of any one man or any one drafting service, or any one department. It is the product of the whole Committee on Agriculture. The committee gave about 40 days' hearings to it. There are thousands of pages of printed hearings in reference to it. Representatives of the Department of Agriculture appeared before the committee and were of much assistance. I am perfectly willing that the department shall have its share of the credit, but I do not want the committee and the House legislative drafting service to be robbed of the credit due them.

Mr. KINCHELOE. I understood the distinction Mr. Morrill made was that the legislative drafting service did assist in the preparation of the packer bill, but did not assist in the preparation of the grain futures act.

The CHAIRMAN. I just wanted the matter to be clear. I do not want to rob the committee and our House legislative drafting service of its share of the credit.

Mr. MORRILL. May I say that I think if you will read the record you will find that I did not say the legislative drafting service did not have anything to do with the drafting of the packers and stockyards' act.

The CHAIRMAN. The question by Mr. Kincheloe, as I understood it, was, Was the packer bill drafted by the Agricultural Department? And your answer was, Yes.

Mr. MORRILL. No, sir; so far as we are concerned it is not material whether we had anything to do with it or not. Subsection (b), beginning at line 21, on page 2, says:

"(b) For the purposes of this act (but not in any wise limiting the foregoing definition of interstate commerce) a transaction in respect to any article shall be considered to be in interstate commerce if such article is part of that current of commerce usual in the grain trade whereby grain and grain products and by-products thereof are sent from one State with the expectation that they will end their transit, after purchase, in another, including, in addition to cases within the above general description, all cases where purchase or sale is either for shipment to another State, or for manufacture within the State and the shipment outside the State of the products resulting from such manufacture. Articles normally in such current of commerce shall not be considered out of such commerce through resort being had to any means or device intended to remove transactions in respect thereto from the provisions of this act. For the purpose of this paragraph the word 'State' includes Territory, the District of Columbia, possession of the United States, and foreign nation."

Mr. KINCHELOE. Is that exactly the language of the packers' bill as near as it is applicable?

Mr. MORRILL. Yes; as near as it is applicable. The only change is in order to introduce grain instead of live stock into the definition, and may I explain right there that that definition is not for the purpose of making the transactions on the future exchanges interstate commerce but for the purpose of establishing a basis upon which the relationship of those transactions on the future exchanges will be shown to the transactions that are in interstate commerce.

Mr. JONES. Before you leave that section, in your judgment would it be permissible to add in the top line of page 3, "products that are sent or are contracted to be sent," or does your definition cover contracts by virtue of the word "transactions."

Mr. MORRILL. I think it is covered, because later it says, "including, in addition to cases within the above general description, all cases where purchase or sale is either for shipment to another State or for manufacture within the State and the shipment outside the State of the products resulting from such manufacture."

Mr. JONES. Yes; I think that covers it.

Mr. STEENERSON. I would like to ask a question right there on this matter. In lines 2 and 3, on page 3, there are the words, "with the expectation that they

will end their transit, after purchase, in another (State)." Now, that language is taken from the decision of the Supreme Court.

Mr. MORRILL. Yes, sir.

Mr. STEENERSON. But in that decision there are these words added, "and actually does enter interstate commerce." Now, you make it interstate commerce simply if there is that expectation, although it never goes outside of the State. That is taken from the packers act.

Mr. MORRILL. That language is the language of the packers and stockyards act which was upheld by the Supreme Court.

Mr. STEENERSON. No; not that particular part of it.

Mr. MORRILL. That definition of commerce was upheld.

Mr. STEENERSON. I did not so understand the decision. Anyway, if it is, it goes further than the Supreme Court held in the other case because it simply held that it is not sufficient that there is the expectation that it will enter commerce, if it does not actually enter into the commerce.

Mr. MCLAUGHLIN of Michigan. Do you mean, Mr. Steenerson, that the additional words you give there are a part of the definition or were the words used by the Supreme Court?

Mr. STEENERSON. This whole definition is copied from the opinion of the Supreme Court.

Mr. MCLAUGHLIN of Michigan. Where are those additional words used?

Mr. STEENERSON. In the Supreme Court decision from which this language is copied. They copied part of it but not the whole of it.

Mr. MORRILL. Mr. Steenerson, I think you are referring to the Swift case, upon the basis of which the packers and stockyards act was drawn.

Mr. TINCHER. Yes; you are talking about the Swift case.

Mr. JONES. And the packers act did not include the words you use.

Mr. KINCHELOE. And in that case the Supreme Court upheld the whole act.

Mr. MORRILL. May I read the definition contained in the packers case so that you can compare it, as I go along, with the language you have before you?

Mr. JONES. Yes; let us have that read.

Mr. MORRILL. Here is the exact language of the packers and stockyards act, and you have before you the language which is used in this new bill.

The CHAIRMAN. Give the page.

Mr. MORRILL. I have not the original act before me.

Mr. TINCHER. It is page 2, line 21, of the bill before us.

Mr. MORRILL. Yes; and what I am going to read to you is from the packers and stockyards act, Title I, section 2, subsection 6 and subsection (b) of that subsection:

"(b) For the purpose of this act (but not in anywise limiting the foregoing definition) a transaction in respect to any article shall be considered to be in commerce if such article is part of that current of commerce usual in the live-stock and meat-packing industries, whereby live stock, meats, meat food products, live-stock products, dairy products, poultry, poultry products, or eggs, are sent from one State with the expectation that they will end their transit, after purchase, in another, including, in addition to cases within the above general description, all cases where purchase or sale is either for shipment to another State, or for slaughter of live stock within the State and the shipment outside of the State of the products resulting from such slaughter. Articles normally in such current of commerce shall not be considered out of such current through resort being had to any means or device intended to remove transactions in respect thereto from the provisions of this act. For the purpose of this paragraph the word 'State' includes Territory, the District of Columbia, possession of the United States, and foreign nation."

Mr. KINCHELOE. Let me ask you a question right there. Beginning at line 23, is there any difference in the language used there? I notice that the original act says, "a transaction in respect to any article shall be considered to be in commerce," and the bill before us says, "shall be considered to be in interstate commerce."

Mr. MORRILL. I think that was merely an accident. It was not intended to make any change, and I do not believe it means anything different.

Mr. KINCHELOE. Do you think there is any difference?

Mr. MORRILL. No; I do not think there is any difference. Certainly, if there was, there was no reason for making the change.

Mr. STEENERSON. I would like to point out that, so far as I recall, the precise point which I made was not made in the Stockyards case before the Supreme Court, and it can not be considered as an authority to uphold this definition.

because the point was not argued. The Supreme Court has said that it not only must have the expectation to enter interstate commerce but must actually go into interstate commerce; in other words, that the expectation must be followed by a realization, and that is omitted here and in the stockyards act. Now, if that precise point had been raised the stockyards decision would have been an authority, but it was not.

Mr. TINCHER. Will you permit this suggestion: In the stockyards act this committee had before it the decision by Mr. Justice Holmes in the Swift case, and premeditatedly and deliberately, not only in the Sixty-seventh Congress, when we passed the bill, but in the Sixty-sixth Congress, when we considered it, defined commerce, going further than the Swift case and with some reluctance as to whether the Supreme Court would approve the definition of commerce, but they have now approved it.

Mr. STEENERSON. Well, I do not believe they have.

Mr. WILLIAMS. In the case of Hill *v.* Wallace, on page 11, Mr. Morrill, I think the court practically passes on this question in the third paragraph.

Mr. MORRILL. Yes. I think that page 11 of the opinion of the Supreme Court shows clearly that it had before it the whole of the definition of commerce as set out in the packers and stockyards act, and it refers expressly to the Swift case and shows expressly that the Swift case has become the rule of the court.

Mr. STEENERSON. But the Swift case is the one which says it must be followed by actual entry into commerce.

Mr. JONES. Was the question that Mr. Steenerson refers to actually raised in the packers' case?

Mr. MORRILL. From the standpoint of a case involving a violation of a law with respect to a transaction which was not in itself interstate commerce, there was not any such case before the Supreme Court, but the case was an attempt by traders in the stockyards in Chicago, who alleged that their transactions were not interstate commerce, to have this law held as not applicable to them. They pointed out that a trader in the live-stock yards at Chicago buys live stock from anybody who comes along, without any reference to where it came from; he does not buy until that live stock arrives in the yards; he knows nothing about its origin, and he sells it to some one else; and the origin has nothing to do with its destination. That was what was before the Supreme Court in the packer's case.

Mr. JONES. The facts actually raised the point whether they specifically commented on it or not.

Mr. MORRILL. Yes; the facts raised the point because that was the basis upon which they were seeking to have the law held applicable.

Mr. TINCHER. In other words, they were not willing to stand for this new definition of commerce.

Mr. MORRILL. And, as a matter of fact, in the case before the Supreme Court the complainant placed a great deal of reliance upon the Hopkins case, at Kansas City, where the United States had failed to sustain its contention, and the court comments upon the Hopkins case as follows:

"Counsel for appellants cite cases to show that transactions like those of the commission men or dealers here are not interstate commerce or within the power of Congress to regulate. The chief of these are Hopkins *v.* United States (171 U. S. 604) and Anderson *v.* United States (171 U. S. 604). These cases were considered in the Swift case and disposed of by the court as follows (p. 397):

"'So again the line is distinct between this case and Hopkins *v.* United States (171 U. S. 578). All that was decided there was that the local business of commission merchants was not commerce among the States even if what the brokers were employed to sell was an object of such commerce. The brokers were not like the defendants before us, themselves the buyers and sellers. They only furnish facilities for sales. Therefore there again the effects of the combination of brokers upon the commerce was only indirect and not within the act. Whether the case would have been different if the combination had resulted in exorbitant charges was left open. In Anderson *v.* United States (171 U. S. 604) the defendants were buyers and sellers at the stockyards, but their agreement was merely not to employ brokers or to recognize yard traders who were not members of their association. Any yard trader could become a member of the association on complying with the conditions, and there was said to be no feature of monopoly in the case. It was held that the combination did not directly regulate commerce between the States, and,

being formed with a different intent, was not within the act. The present case is more like Montague & Co. *v.* Lowry (193 U. S. 38).

"It is clear from this that if the bill in the Swift case had averred that control of the stockyards and the commission men was one of the means used by the packers to make arbitrary prices in their plan of monopolizing the interstate commerce, the acts of the stockyards owners and commission men would have been regarded as directly affecting interstate commerce and within the antitrust act. Congress has found as an evil to be apprehended and to be prevented, by the act here in question, the use and control of stockyards and the commission men to promote a packers' monopoly of interstate commerce. The act finds and imports this injurious direct effect of such agencies upon interstate commerce just as the intent of the conspiracy charged in the indictment in the Swift case tied together the parts of the scheme there attacked and imported their direct effect upon interstate commerce."

Then the court goes on further to discuss the Anderson and Hopkins case.

The thing that the Supreme Court was considering was whether or not the transactions with which they were dealing affected interstate commerce and not whether they were in themselves interstate commerce.

Now, in section 3 of the bill——

Mr. KINCHELOE (interposing). Are you now taking up a new section?

Mr. MORRILL. This is a new section I am starting to read that is in this bill but not even in the old bill. Section 3 of the old law is a tax upon puts and calls.

Mr. KINCHELOE. Is there any similarity between this section 3 in the present bill and any section in the packer bill?

Mr. MORRILL. No, sir. This section 3 corresponds to declarations by this committee in its report behind the packer and stockyards act, but there is nothing like it in the packer and stockyards act.

Mr. TINCHER. There is something like it in the packer and stockyards decision, however.

Mr. MORRILL. Yes, sir; very much.

The CHAIRMAN. You may continue your discussion of the bill.

Mr. MORRILL. Section 3 recites:

"SEC. 3. That transactions in grain involving the sale thereof for future delivery as commonly conducted on boards of trade and known as 'options' or 'futures' are affected with a national public interest; that such transactions are carried on in large volume by the public generally and by persons engaged in the business of buying and selling grain and the products and by-products thereof in interstate commerce; that the prices of such transactions are generally quoted and disseminated throughout the United States and in foreign countries as a basis for determining the prices to the producer and the consumer of grain and the products and by-products thereof in interstate commerce; that such transactions are utilized by shippers, dealers, millers, and others engaged in handling grain and the products thereof in interstate commerce as a means of hedging themselves against possible losses through fluctuations in prices; that the transactions on such boards are extremely susceptible to speculation, manipulation, and control, and sudden or unreasonable fluctuations in the prices thereof frequently occur as a result of such speculation, manipulation, or control which are detrimental to the producer or the consumer and the persons handling grain and products and by-products thereof in interstate commerce, and make such business unsafe and uncertain from time to time; and that such fluctations in prices are an obstruction to and a burden upon interstate commerce in grain and the products and by-products thereof and render regulation imperative for the protection of such commerce and the national public interest therein."

Now, the Supreme Court does not say that that statement is true, but, of couse, if the facts show them to be true they would support this law. It is, of course, for your committee to decide on the basis of the record you have before you whether that statement is true.

Mr. KINCHELOE. That seems to be an hypothesis upon which something else is based. What was the idea there?

Mr. MORRILL. That was for the Congress to say, what it deems necessary to say were transactions on boards of trade.

Mr. TINCHER. The Supreme Court of the United States gave the basis for this. They said they would consider that—that it was proper for the court to consider the thing that actuated the Congress.

Mr. KINCHELOE. I was reading that section last night and wondered what it meant.

Mr. TINCHER. This is a paragraph that may well go in the bill because we have had extensive hearings and nobody has disputed this state of facts; no grain man even has disputed it.

Mr. KINCHELOE. It is more like a whereas before a resolve, is it not?

Mr. TINCHER. Perhaps so.

Mr. JONES. It is a statement as to the jurisdiction of the Congress, I would suggest.

Mr. MORRILL. Yes, sir.

Mr. TINCHER. The Supreme Court approves that for legislation.

Mr. MORRILL. Without confining itself to the record shown by the committee hearings and reports and debates on the floor of the Congress, it declares its conclusions in law.

Mr. KINCHELOE. It seems more a statement than a fact.

Mr. MORRILL. It is quite true that section 3 is not legislation in the sense of regulating the conduct of persons.

Mr. TINCHER. It is a definition.

Mr. MCLAUGHLIN of Michigan. It is a legislative declaration of a determination by the Congress that if the facts exist this is the law.

Mr. MORRILL. You may find in many States statutes on the police powers of the States that such and such a thing is affected by public interest.

Mr. KINCHELOE. It is more or less of a preamble?

Mr. MORRILL. Yes, sir.

Mr. VOIGT. This bill does not repeal the other grain futures act, does it?

Mr. MORRILL. No, sir; and it is not necessary to do so.

Mr. VOIGT. Why would not it be the better policy to repeal the present act with this bill and simply put the taxing clause of the act on puts and calls in this bill, so as to have the whole thing in one act?

Mr. MORRILL. Of course, you could do that. But I would suggest this—and it is merely my suggestion, you understand—that you do not commingle the taxing and regulating provisions in one bill.

Mr. KINCHELOE. We better hold what we have—is that it?

Mr. MORRILL. Yes, sir.

Mr. VOIGT. There is some uncertainty in the Supreme Court's decision as to just what authority is left in the Secretary of Agriculture, is there not?

Mr. MORRILL. No, sir; at least, not according to our own view of it. We do not feel that we have any authority to in any way regulate boards of trade or transactions on those boards or to compel them to keep records or to make reports. Section 9, to which Chief Justice Taft refers, is simply an authorization to carry on investigational work and to make publications just in precisely the same manner as the authorization is given the Bureau of Markets in the annual appropriation acts.

Mr. KINCHELOE. That stays in the bill—section 9?

Mr. MORRILL. Yes, sir.

Mr. VOIGT. Your understanding of the old law is that after all, what is left of it is the taxation of puts and calls?

Mr. MORRILL. The taxation of puts and calls and authorization to carry on investigational work.

Mr. VOIGT. And you have that same authority in this bill?

Mr. MORRILL. Yes, sir. Having the same authority in this bill and covering precisely the same feld, it would simply take the place of the old act. Section 4 takes the place of the taxing provisions——

Mr. PURNELL (interposing). Before you leave section 3, may I ask you what, in your judgment, is the necessity for this language, beginning in line 13, page 4:

"And that such fluctuations in prices are an obstruction to and a burden upon interstate commerce."

Just what had you in your mind when you say these are obstructions to and burdens upon interstate commerce?

Mr. MORRILL. I mean this, that from time to time there comes about a condition on the future exchanges of extreme movements up or down, without any necessary relationship to cash grain conditions generally, and that in so far as the members of the cash grain trade feel it necessary or desirable to use the future exchanges for heding purposes the hedge is not safe or reliable. In other words, I am speaking now of hedging in cash grain transactions. I think probably I do not need to enter into a discussion of what is a hedge or what the hedging of cash grain transactions may be.

Mr. PURNELL. Oh, no; we had 40 days of that.

Mr. MORRILL. But assuming that there is a good, sound business reason for using the future exchange for the purpose of hedging cash grain transactions, if the fluctuations in prices on future exchanges for any reason are out of harmony with any movement in the cash grain trade your hedge is weakened or lost.

Mr. TINCHER. Right on that subject might be a good place for this: Do you know what has happened on the grain market since the decision of the Supreme Court of the United States on this act?

Mr. MORRILL. Well, I do not want to express an opinion; in fact, I do not think I am competent to express an opinion on the operations of the Chicago Board of Trade, but here is a chart, and the red field shown thereon covers the range between high and low prices on May futures during the months up to May, and between the places where my fingers are you will see the prices during the month of May. That is the high and the low shown there and the black line in the middle is the class. Along about the 1st of May there was a price above $1.45, and then within a few days there was a drop, and then a rise to a price of about $1.48, and then a decline, with a rise again, and then it went down, until on the 27th of May, when the low point of $1.25 or $1.24 was reached, and it has dropped considerable since then.

Mr. TINCHER. I observed in a newspaper article under a Chicago date line that the holding of this act unconstitutional by Chief Justice Taft, on May 15, had resulted in a rise in price of wheat of 4 cents a bushel—for which all of the farmers no doubt would be very thankful. But what was the price of wheat on May 15?

Mr. MORRILL. It was about $1.46.

Mr. TINCHER. And what was the price on May 27?

Mr. MORRILL. On May 27 it was down to $1.25.

Mr. TINCHER. That was after the farmers had had the benefit of the Supreme Court's decision for 12 days. I have not seen any headline announcing that.

Mr. CLARKE. Have you taken into consideration in that chart or have you prepared any other tables giving commodities not affected by the decision of the Supreme Court; have you prepared a schedule like that to show fluctuations in prices of other commodities?

Mr. MORRILL. Yes, sir; we have figures for operations on other future exchanges, but of course conditions in regard to commodities are more or less different. For instance, I would say conditions are hardly analagous as between cotton and grain.

Mr. KINCHELOE. But the fact remains, as Mr. Aswell remarked a few moments ago, that the price of cotton has increased 5 cents a pound in the last month. That is a fact, is it not?

Mr. MORRILL. Yes, sir.

Mr. TINCHER. I am not reflecting on boards of trade, but am remarking what happened in the way of price fluctuations. What was the price of wheat on yesterday?

Mr. MORRILL. July futures on yesterday were $1.12.

The CHAIRMAN. What is the price of cash wheat now?

Mr. MORRILL. I do not seem to have that here. I wonder if Mr. Wells can answer that question.

Mr. WELLS, of Minneapolis. No; I do not know the quotations on the Chicago market.

Mr. TINCHER. But you have the price of wheat on yesterday and also on the day when the court rendered the decision, May 15.

The CHAIRMAN. Yes; and what was that price?

Mr. MORRILL. The price was about $1.48—did not I say that?

Mr. TINCHER. Yes, sir.

Mr. MORRILL. And to-day July wheat is——

The CHAIRMAN. It went down about 32 cents, I believe.

Mr. MORRILL. May closed about $1.16 or $1.17, and July wheat on yesterday was $1.12.

Mr. TINCHER. May wheat dropped from $1.48 to $1.16.

The CHAIRMAN. Is that right, Mr. Morrill?

Mr. MORRILL. Yes, sir.

Mr. KINCHELOE. Let us now proceed with the bill. But before you read the next section is any part of section 4 any part of the original bill or any part of the packer and stockyards bill?

Mr. MORRILL. No, sir.

Mr. KINCHELOE. It is a new section?

Mr. MORRILL. Section 4, beginning on page 4, at line 19, recites——

The CHAIRMAN (interposing). Do you think the record substantiates the statements made in this bill?

Mr. MORRILL. I think so.

The CHAIRMAN. Do you think this committee has made a strong enough case to support the declaration in the bill?

Mr. MORRILL. Of course, I have not gone over the record made before your committee, not in detail at least, but it seems to me from what I have heard about that record, and judging by the character of the gentlemen who have appeared before the committee, their reliability as speakers for the exchanges and against the exchanges and for the cash-grain trade, and so on, that the record does not support the finding.

The CHAIRMAN. It might be well to have the Federal Trade Commission testify before the committee.

Mr. TINCHER. We can come to that later on.

The CHAIRMAN. It is up to the committee to make out a case. I do not think a mere declaration of the Congress is sufficient.

Mr. TINCHER. I will say that I can take the hearings on the grain futures act and confine myself entirely to the statements of representatives of the grain exchanges, and they will substantiate this recital here. I say ever word of it is substantiated by the officers and men prominent in the grain trade.

The CHAIRMAN. If it is already in the record, it is not necessary to add to it, but I asked that question in order that we might have Mr. Morrill's opinion.

Mr. MORRILL. Your committee has on file the report of the Federal Trade Commission on wheat prices for the 1920 crop, published December 13, 1920. I will merely call attention to one paragraph; there is a great deal in this report, but I do not want to burden you with reading so much of it, so I will read from page 57:

"Fluctuations in prices and in the spread between cash and future prices are just as unsatisfactory to one class of hedgers as to another. Such fluctuations mean an imperfect working of the hedge and are occasion for the taking of larger margins by millers as well as by others who have occasion to use the futures market for hedging purposes. On the whole, however, so far as millers can get flour contracts to hedge, they can make a more satisfactory use of futures than elevators in that the tendency of the discount to narrow is in general in their favor instead of against them. It is alleged by some men in the grain trade that millers have been a considerable factor this summer in the wheat-futures market on the buying side, but the weight of the evidence would tend to show that they have been a very much less important factor in this way than has usually been the case.

"The typical opinion with regard to the present wheat-futures market is that it is not satisfactory for hedging purposes, but is better than nothing at all."

Mr. PURNELL. After all the responsibility is upon Congress to settle that issue.

Mr. MORRILL. Yes, sir; and I would not want to leave the impresssion at all that merely writing in section 3 would in itself close the issue; it must be backed by facts.

Mr. PURNELL. And, of course, the first responsibility in that matter is upon this committee.

Mr. MORRILL. Yes, sir.

Mr. VOIGT. Court decisions are to the effect that where testimony varies on a point of this kind it is for the legislative body to draw the right conclusion.

Mr. MORRILL. Yes, sir.

Mr. VOIGT. I take it there is ample evidence in the hearings already held to justify these statements.

Mr. GERNERD. I do not think there is any doubt about that.

Mr. MORRILL. That is a question I think the Supreme Court will consider, as to whether in its opinion the Congress had before it sufficient evidence for the Congress to proceed upon.

The CHAIRMAN. If you will turn to page 10 of the Supreme Court decision I think you will find it is up to the Congress to make good on that declaration, but in your opinion the facts have been established in the record.

Mr. MORRILL. It seems to me so.

Mr. KINCHELOE. You might as well go ahead with your explanation of the bill.

Mr. MORRILL. Beginning on page 4, line 19, section 4, and coming down through page 5 to line 7, is new matter not contained in the future trading act, and is

intending to take the place of the tax imposed by the corresponding part of section 4 of the future trading act. Section 4 reads:

"SEC. 4. That it shall be unlawful for any person to deliver for transmission through the mails or in interstate commerce by telegraph, telephone, wireless, or other means of communication any offer to make or execute, or any confirmation of the execution of, or any quotation or report of the price of, any contract of sale of grain for future delivery on or subject to the rules of any board of trade in the United States, or for any person to make or execute such contract of sale, which is or may be used for (a) hedging any transaction in interstate commerce in grain or the products or by-products thereof, or (b) determining the price basis of any such transaction in interstate commerce, or (c) delivering grain sold, shipped, or received in interstate commerce for the fulfillment thereof."

Mr. KINCHELOE. I see you use the words "interstate commerce" right frequently in there.

Mr. MORRILL. Yes, sir.

Mr. TINCHER. Let me ask you this question. Heretofore we have dealt in the definition "commerce." Now this takes the place of the taxing feature of the other bill, and having defined certain things it is proposed to regulate in this way rather than in the taxing way?

Mr. MORRILL. Yes, sir; it is a straight out regulation.

Mr. KINCHELOE. Are subsections (a) and (b) the same as the old act?

Mr. MORRILL. They are practically verbatim.

Mr. TINCHER. The first real difference is in subsection (f).

Mr. MORRILL. There is some slight change before we come to that.

Mr. KINCHELOE. Suppose you go along and call out the differences in the subsections, where there are any.

Mr. MORRILL. All right.

Mr. KINCHELOE. Are there any in section 4, subsection (a)?

Mr. MORRILL. I think there is no change in subsection (a). But may I say that in going through this we found in the original bill, here and there, little oddities of language which did not seem to us it was necessary for us to repeat.

Mr. KINCHELOE. Well, this will have oddities again by the time it gets through the House and the Senate. I do not know who is responsible for them but we will always have little oddities in a bill in its journey through the Congress.

Mr. MORRILL. Perhaps so.

Mr. KINCHELOE. I take it that all members of the committee have the original act, and Mr. Morrill if you will read the new bill we can follow with the old act and see at a glance just what changes are proposed.

Mr. MORRILL. If you wish me to do that I will be glad to do it.

Mr. TINCHER. I think that is a waste of time.

Mr. CLARKE. I do not think so. I would like to follow it right along through the new bill.

Mr. KINCHLOE. Is there any difference down to section 5, subsection (f)?

Mr. MORRILL. I will go right along with the bill in the regular way if you wish, or I can jump over to it. So far as the subsections (a) and (b) in section 4 are concerned there is no change so far as I recall.

Mr. CLARK. I would rather you would proceed right along in detail. I want to make certain that I understand this matter this time.

Mr. MORRILL. Very well. On page 5, line 8, we have:

"(a) Where the seller is at the time of the making of such contract the owner of the actual physical property covered thereby, or is the grower thereof, or in case either party to the contract is the owner or renter of land on which the same is to be grown, or is an association of such owners, or growers of grain, or of such owners or renters of land."

Mr. KINCHELOE. That is the same verbatim.

Mr. MORRILL. Yes, sir. Now the next section is:

"(b) Where such contract is made by or through a member of a board of trade which has been designated by the Secretary of Agriculture as a 'contract market,' as hereinafter provided, and if such contract is evidenced by a memorandum in writing which shows the date, the parties to such contract and their addresses, the property covered and its price, and the terms of delivery: *Provided*, That each board member shall keep such memorandum for a period of three years from the date thereof, or for a longer period if the Secretary of Agriculture shall so direct, which record shall at all times be open to the inspection of any representative of the United States Department of Agriculture or the United States Department of Justice."

Mr. KINCHELOE. That is the same.

Mr. MORRILL. Yes, sir. Now we come to section 5. This carries a little change in phraseology, and then subsection (a) also carries a change to which I will refer:

"SEC. 5. That the Secretary of Agriculture is hereby authorized and directed to designate any board of trade as a 'contract market' when, and only when, such board of trade complies with and carries out the following conditions and requirements:"

Mr. PURNELL. That is the same in substance.

Mr. MORRILL. Substantially so, yes. Now I will take the next section:

"(a) When located at a terminal market where cash grain of the kind specified in the contracts of sale of grain for future delivery to be executed on such board is sold in sufficient volumes and under such conditions as fairly to reflect the general value of the grain and the differences in value between the various grades of such grain, and where there is available to such board of trade official weighing and inspection service approved by the Secretary of Agriculture for the purpose."

Mr. KINCHELOE. There are two differences there.

Mr. PURNELL. It requires the approval of the Secreatry of Agriculture.

Mr. MORRILL. The only difference that is important to consider, I think, is the last one. May I say that when you get into administrative work, trying to carry out one of these laws, people come with all sorts of arguments to you about the language, and there was one small point in this that I think we have to overcome. There is nothing in that change in reference to approval by the Secretary of Agriculture that is designed to get at anything in Chicago or Minneapolis or these larger markets where there is an established inspection and weighing service that we know is satisfactory to the grain trade. But there were certain small markets that applied to us for designation where there was no such official weighing and inspection service.

I will give you an illustration: A small southern market, in one of the Southeastern States, applied to us for designation as a contract market. As a matter of fact, I did not state to them anything that I thought about their inspection and weighing. The way the matter was disposed of was by calling attention to the fact that they did not deal in futures as covered by this bill; but, as a matter of fact, if they had dealt in futures we would have been compelled to tell them they did not have a weighing and inspection service that would be satisfactory, because they did not have anything of that kind. It is a market that handles a total of about 300 cars of grain in a whole year.

Mr. TINCHER. They just thought they wanted it.

Mr. MORRILL. As a matter of fact, what they were seeking was advertising. They wanted action by the Secretary of Agriculture for the advertisement it would give their particular community. Now, that is the reason for this particular change in language. It has been suggested to me that we were possibly trying to lay the basis for disturbing some established official weighing and inspection service in one of the big markets. That was not in our minds at all.

Mr. STEENERSON. Would not this confer upon the Secretary of Agriculture authority to substitute a Federal means for State weighing in Minneapolis now?

Mr. MORRILL. No; it does not involve that possibility at all.

Mr. JONES. Let us go ahead with a discussion of this bill.

Mr. STEENERSON. You have not substituted Federal inspection and weighing of stock, have you?

Mr. MORRILL. No, sir.

Mr. TINCHER. Your own courts did that.

Mr. STEENERSON. But if we had not had an act of Congress it could not have been done. As I understand it, the weighing in the stockyards is under the authority of the Federal Government now?

Mr. MORRILL. Not unless it has hapened within the last 24 hours, because I have not been advised of it. We have a representative of the packers and stockyards section of the Department of Agriculture at South St. Paul now, Mr. Gore, who is conferring with the parties there as to Federal weighing, but no decision has been reached. This law does not carry any authority to the Secretary of Agriculture to do otherwise than determine whether he approves or disapproves this particular weighing service.

Mr. STEENERSON. That is what I wanted to know.

Mr. CLARKE. Whether those 11 men up there have jobs under the Federal or the State Government; that is it, I take it.

Mr. MCLAUGHLIN of Michigan. This bill does not provide that the Secretary of Agriculture shall control weighing and inspection.

Mr. WILLIAMS. Let us proceed.

Mr. MORRILL. We will next take up subdivision (b), beginning on line 17, page 6 of the bill:

"(b) When the governing board thereof provides for the making and filing by the board or any member thereof, as the Secretary of Agriculture may direct, of reports in accordance with the rules and regulations, and in such manner and form and at such times as may be prescribed by the Secretary of Agriculture, showing the details and terms of all transactions entered into by the board, or the members thereof, either in cash transactions consummated at, on, or in a board of trade, or transactions for future delivery, and when such governing board provides, in accordance with such rules and regulations, for the keeping of a record by the board or the members of the board of trade, as the Secretary of Agriculture may direct, showing the details and terms of all cash and future transactions entered into by them, consummated at, on, or in a board of trade, such record to be in permanent form, showing the parties to all such transactions."

And here are the words inserted, "including the persons for whom made"

Mr. CLARKE. What is the new part there?

Mr. MORRILL. That is the new part, these words only, "including the persons for whom made."

And then it goes on:

"Any assignments or transfers thereof, with the parties thereto, and the manner in which said transactions are fulfilled, discharged, or terminated. Such record shall be required to be kept for a period of three years from the date thereof, or for a longer period if the Secretary of Agriculture shall so direct, and shall at all times be open to the inspection of any representative of the United States Department of Agriculture or United States Department of Justice."

Now, as a matter of fact, under the future trading act we felt we did have authority to get that information as to the parties for whom made, but some people seemed to be doubtful, and it seemed to us in rewriting this language that we should insert it so as to make it clear.

Mr. CLARKE. Do you mean that is in the decision?

Mr. MORRILL. No; I mean in the matter of interpreting the statute, with reference to its constitutionality.

The CHAIRMAN. You may proceed.

Mr. MORRILL. We will now take up subsection (*c*):

"(*c*) When the governing board thereof provides for the prevention of dissemination through the mails or in interstate commerce by telegraph, telephone, wireless, or other means of communication, by the board or any member thereof, of false, misleading, or inaccurate reports concerning crop or market information or conditions that affect or tend to affect the price of grain in interstate commerce."

Mr. KINCHELOE. There is some new matter there.

Mr. MORRILL. We have made such changes there as were necessary to make a direct connection with interstate commerce.

Mr. MCLAUGHLIN of Michigan. Does that include local telephone information or communication?

Mr. MORRILL. No; I think not. I do not think that would include local telephone communications.

Mr. JONES. It would include the local mails, however,

Mr. MORRILL. Yes, sir. But I want to say this, that possibly under the theory of the bill it is not necessary to make any such limitations as have been made here, for when you get to such cases you have probably all the supervision you need anyhow.

Mr. TINCHER. I do not suppose there will be any quarrel with the exchanges about that. They are willing to put into effect any rules and regulations necessary to stop false market reports.

Mr. MORRILL. Yes; I may say that boards of trade have shown without exception, through their official bodies, every evidence of a desire to cooperate with the Department of Agriculture and to do everything they can reasonably do to carry out the purposes of Congress under the future trading act. We have had no difficulty from the boards of trade on that score.

Mr. TINCHER. That is an evil they all wanted to get rid of; that is, the sending out of false market reports. I have never heard anyone defend any person who would do such a thing; I have never witnessed or heard of anything that tended to show anyone wanted to uphold anything of that kind.

Mr. CLARKE. There is a wide variety of opinion as to what the market will be for wheat, corn or any other agricultural product; of course, men will differ as to what the market in the future will be for such things.

The CHAIRMAN. Mr. Morrill, you may proceed.

Mr. MORRILL. The next subsection is:

"(*d*) When the governing board thereof provides for the prevention of manipulation of prices or the cornering of any grain by the dealers or operators upon such board."

Mr. KINCHELOE. That is the same.

Mr. MORRILL. Yes, sir. The next section is:

"(*e*) When the governing board thereof admits to membership in and all privileges on such board of trade, under such terms and conditions as may be imposed lawfully on other members of such board"—

There is a change for the purpose of expressing the thing about which there has been some question—

"any duly authorized representative of any lawfully formed and conducted cooperative association of producers having adequate financial responsibility which is engaged in cash grain business in interstate commerce: *Provided*, That no rule of a contract market against rebating commissions shall apply to the distribution of excess earnings among the bona fide members of any such cooperative association."

Now, the question has been raised and will be raised as to whether that subdivision (*e*) as a part of a new regulatory law under the interstate-commerce power is reasonably related to the object to be accomplished, whether it is necessary to provide for the admission of cooperative associations to membership in the accomplishment of the general purpose of the bill.

Mr. TINCHER. I am willing to admit that it is if Brother Steenerson will admit it. What do you say about that, Mr. Steenerson?

Mr. STEENERSON. Well, we will see.

Mr. CLAGUE. Let us not get into any outside argument.

Mr. MCLAUGHLIN of Michigan. I have not followed the old act as you have read it. What was the change there?

Mr. MORRILL. The change began on line 5, the last word, and runs into lines 6 and 7, being:

"Under such terms and conditions as may be imposed lawfully on other members of such board."

Mr. MCLAUGHLIN of Michigan. What law relates to it now?

Mr. MORRILL. I did not catch your question, Mr. Congressman?

Mr. MCLAUGHLIN of Michigan. Speaking of the word "lawfully," what does it refer to?

Mr. MORRILL. Such matters as discipline and payment of assessments.

Mr. STEENERSON. And arbitration.

Mr. MORRILL. Yes; arbitrations and things of that kind.

Mr. MCLAUGHLIN of Michigan. The idea was to provide that these cooperative associations could not be excluded simply because they were cooperative associations or because there was a rebate allowed, sometimes called splitting commissions, to members of the associations. I have always felt that these local associations ought to be permitted to come in, and permitted to come in only in case they do as everybody else does and play the game fair. There ought to be some control over them. They ought not to be exempted from any provision in any act of Congress; if there is anything improper or unreasonable about them or they do not play the game fair, of course they ought not to come in.

Mr. MORRILL. That is the purpose of changing the language there, to make it clear that they are not exempt from other requirements or control of an exchange, except in reference to the payment of patronage dividends.

Mr. JONES. That is, they are to be subjected to all of the regulations of a board of trade except as to distribution of dividends?

Mr. MORRILL. Yes, sir.

Mr. JONES. Do you think it would be possible under that condition for a board to put in effect some other requirements that would exclude them by virtue of the character of their organization?

Mr. MORRILL. If a board of trade should establish a rule which was not applicable to all other members alike and which had the effect of excluding them without any apparent justification, it seems to me it might be held that they were not carrying out the law.

Mr. KINCHELOE. You expect them to be held to all portions of the law except that they will be permitted to pay patronage dividends?

Mr. MORRILL. Yes, sir.

Mr. MCLAUGHLIN of Michigan. I was wondering if that term "lawfully" were up to some court to determine the reasonableness of a regulation, or an attempt to exclude some association, what would be the effect of the ruling thereon.

Mr. MORRILL. I will give you an illustration of the kind of question that was raised in the hearing at Chicago preceding the designation of the boards of trade as contract markets. At that time Mr. Clifford Thorne appeared representing, if I remember correctly, the American Farm Bureau Federation, and asked certain questions of representatives of the exchanges. Among them he raised the question whether the board, through the fact that it made certain requirements as to admission to membership, such as the necessity for having two sponsors for an application, might keep a cooperative association out on the ground that it could not get the two sponsors required. Mr. Griffin, who was then president of the exchange, answered by saying that he would personally be one sponsor for any association coming within the provisions of this law, and he would guarantee to get another. Mr. Thorne was not entirely satisfied with that promise, and feared that without regard to anything Mr. Griffin might state it still might happen.

It was our feeling if the only thing that stood in the way of a cooperative association getting membership was the absence of two sponsors, and it could not be shown as a matter of fact that it was not financially responsible or a nonlaw-abiding organization, that it had not met the requirements in other respects made of other members of the exchange, then it could not be said it had not complied with the requirements of the law.

The CHAIRMAN. What about efforts to determine the legality of any and all questions that may arise?

Mr. MORRILL. It is possible that that may be used as an argument in seeking to enjoin the enforcement of this law, the same as was done in seeking to enjoy the enforcement of the future trading act. Mr. Hill and others with him based a part of their argument on the provision admitting cooperative associations to membership.

The CHAIRMAN. In that way there might be no end to the litigation, all sorts of questions being raised.

Mr. TINCHER. What the chairman means is that every time a cooperative association——

The CHAIRMAN (interposing). Every time a question is raised it would have to be determined by a court.

Mr. TINCHER. I do not know how you could avoid that sort of thing.

Mr. MCLAUGHLIN of Michigan. Wasn't there something in the old act requiring the Secretary of Agriculture to pass upon the reasonableness of regulations?

Mr. MORRILL. This is the same as that in that respect. These are the conditions under which a contract market may obtain its designation and retain that designation, and the Secretary of Agriculture is authorized to determine whether those conditions have been met. And there is a procedure prescribed here, just as there was in the old bill, for taking up the question at any time it appears they are not continuing to comply with the conditions set out.

Mr. JONES. Are those terms and conditions to be prescribed by the Secretary of Agriculture or by the board, or both?

Mr. MORRILL. By a governing board. It starts out by saying, "by the governing board."

Mr. JONES. The point I suggested awhile ago was, would it be possible for one of these boards of trade to figure out some condition other than distribution of excess profits that would enable them to exclude a cooperative association?

Mr. TINCHER. The Secretary of Agriculture would not allow them to do that.

Mr. MORRILL. I think it would be a questtion of fact in each case whether it was a reasonable or unreasonable requirement.

Mr. KINCHELOE. They could have done that under the original act.

Mr. JONES. Does this bill enable the Secretary to say that?

Mr. MORRILL. It enables him to say: You are not meeting the conditions, and therefore your designation as a contract market will be taken away from you.

The CHAIRMAN. Do not you think the Secretary should be given power to determine the question, subject to court review?

Mr. MORRILL. It is determined by the Secretary and by the commission.

The CHAIRMAN. How is it in the first instance?

Mr. MORRILL. It is determined in the first instance by the Secretary and by the commission, and it is subject to review by the courts.

Mr. KINCHELOE. It was the same in the original act?

Mr. MORRILL. Yes.

Mr. MCLAUGHLIN of Michigan. My recollection is that it was taken up in the House and that some one offered an amendment.

Mr. GERNERD. You offered an amendment.

Mr. MCLAUGHLIN of Michigan. I had something to do with it but do not know who framed the amendment.

Mr. MORRILL. There was something in the way of an amendment in the House that had that in view.

Mr. MCLAUGHLIN of Michigan. To put up to the Secretary of Agriculture to determine whether these regulations as to admission to membership were reasonable.

Mr. MORRILL. I think that would follow anyhow, because these are conditions of designation.

Mr. MCLAUGHLIN of Michigan. Of course, he makes the suggestion of regulation, and perhaps may actually make the regulation in the first instance, but this would be some authority to pass on it.

Mr. GERNERD. Would it be possible to clarify this very section by inserting that the Secretary of Agriculture shall pass on it?

Mr. CLAGUE. That is already in it.

Mr. MCLAUGHLIN of Michigan. I do not know what that word "lawfully" means because there is no other law relating to it. It may be that a board of trade can make any kind of regulation that is not forbidden by law and it will be lawful.

Mr. KINCHELOE. It is that word "lawfully" that I wondered about. Does it mean anything anyhow?

Mr. MORRILL. Suppose you read it with the word "lawfully" left out.

Mr. STEENERSON. You might say "reasonably" imposed.

Mr. MORRILL. It seems to me you have some qualifying clause.

Mr. MCLAUGHLIN of Michigan. I do not see why you should say "other members of the board" because any other member seeks admission under the same circumstances.

Mr. MORRILL. They do it under the same circumstances except as to patronage dividends.

Mr. KINCHELOE. I understand that the same rules as to admission apply to all, except as to distribution of dividends.

Mr. MORRILL. That is all.

Mr. KINCHELOE. I do not see where the word "lawfully" really has anything to do with it at all. I think it is all right without that word. Strike it out and say "as may be imposed by the board."

Mr. MCLAUGHLIN of Michigan. I have no objection to a court reviewing it. I think a man should have his day in court on about everything.

Mr. KINCHELOE. So do I.

Mr. MCLAUGHLIN of Michigan. But I do not know what the word "lawfully" here means.

Mr. MORRILL. I make no particular point about that word, or even about the whole clause.

Mr. CLARKE. Do you think it is necessary to put this in?

Mr. MORRILL. Yes, sir. The object to be accomplished was the thing I had in mind, to place them all on a parity with other members of the board in all respects, so that the only distinction that could be made between them and others is the question involved in the payment of patronage dividends. There are other things that a board undertakes to regulate with respect to its members, that are not in any way covered by this bill, but presumably are covered either by statute or the common law in the States where they operate.

Mr. KINCHELOE. Do you really think that the word "lawfully" has any significance there; I mean answering the question as a lawyer?

Mr. MORRILL. I think it is significant. I think it would enable us to deal a little more satisfactory with arguments that might come up as to regulation, as to conditions that might be imposed, as was suggested from the other side of the table awhile ago, with the object in view of excluding a cooperative association without making it appear that way.

Mr. TINCHER. There are some States that have legislation on the question of cooperative associations.

Mr. MORRILL. Yes; I think Missouri and Minnesota have legislated on that matter.

Mr. KINCHELOE. Let us take up section 8.

The CHAIRMAN. It is now mandatory on the Secretary to admit these boards of trade if they are good.

Mr. MORRILL. It is absolutely mandatory on him.

Mr. CLARKE. There is no discretion left to him?

The CHAIRMAN. Where in this bill does it provide that the Secretary may determine the question of lawfulness?

Mr. MORRILL. That is, as to whether they have made proper terms and conditions.

Mr. TINCHER. It is just like the old bill in that respect.

The CHAIRMAN. Where do you give the Secretary of Agriculture power to determine the question of lawfulness?

Mr. MORRILL. In section 2 it is provided that any board of trade desiring to be designated a contract market shall make application to the Secretary of Agriculture for such designation and accompany same with a showing that it complied with the above conditions and with a sufficient assurance that it will continue to comply with the above conditions.

The CHAIRMAN. That is a promise to be good, but suppose they are not good?

Mr. MORRILL. Following that up, on page 9, beginning line 12:

"(*a*) A commission composed of the Secretary of Agriculture, the Secretary of Commerce, and the Attorney General is authorized to suspend for a period not to exceed six months or to revoke the designation of any board of trade as a 'contract market' upon a showing that such board of trade has failed or is failing to comply with any of the above requirements or is not enforcing its rules of government made a condition of its designation as set forth in section 5."

The CHAIRMAN. That is as the commission may determine. But where do they determine the question of lawfulness? Does not that have to be determined by a court?

Mr. MORRILL. The question of lawfulness is one of the things embraced in the terms and conditions set out in section 5.

The CHAIRMAN. Who determines whether it is lawful or not?

Mr. MORRILL. Necessarily, in order to determine whether they are entitled to designation as a contract market or not, the Secretary of Agriculture and the board would have to consider whether they had imposed lawful conditions.

The CHAIRMAN. Would that be set out in the application, or provided in detail in their rules and regulations?

Mr. MORRILL. They have to set out in their application facts that are necessary to show that they come within this law, and to furnish with their application all their rules and regulations, their forms of contract, and the like, to enable the Secretary to determine whether they meet the conditions.

Mr. TINCHER. There is some objection to subsection (f). I wish you would get to that.

Mr. MORRILL. Subdivision (f), page 8, beginning line 15, is entirely new. It is not embraced in the future trading act.

"(f) When the governing board thereof provides for making such changes from time to time in the terms and conditions of the forms of contracts of sale to be executed on or subject to the rules of such board as may be necessary to remove or overcome any material prejudice or disadvantage to sellers or buyers thereof found by the Secretary of Agriculture after investigation and public hearing and communicated by him to such board, which substantially affects the price or prices of such contracts so as to render them hazardous or unreliable as hedges or price bases for transactions in interstate commerce in cash grain or the products or by-products thereof.

Mr. KINCHELOE. What does that mean?

Mr. MORRILL. That language is designed to cover questions which arise from time to time in the cash-grain trade and on the futures markets as to terms of contracts in their application to sellers and buyers. Such, for example, as the matter of fixed or arbitrary discounts between the grades deliverable on a contract as distinguished from commercial discounts; such as the question whether the grades deliverable on a contract are such as to afford opportunity for depressing the market or getting it out of line with true commercial conditions:

or the question that has arisen from time to time as to the capacity of storage in the market available for delivery of grain on contracts.

I use these as illustrations because these are the thing that come up quite generally for discussion in the cash-grain trade and are embraced in letters to the Secretary of Agriculture from time to time making complaints about future exchanges. And an analysis of these conditions will show that they do affect the price of a contract. It is necessarily the case that any substantial condition in a contract affects its value to the seller and the buyer.

Mr. CLARKE. Mr. Chairman, we can not possibly finish this hearing to-day. Let us adjourn. I want to get over on the floor, and still I want to be here when this hearing is going on.

The CHAIRMAN. This is all new matter.

Mr. MORRILL. Subdivision (f) is enirely a new matter.

Mr. KINCHELOE. It is not even subdivision (b) of section 6.

Mr. MORRILL. No, sir; it is not the same as any provision in the old bill.

Mr. TINCHER. Is there any substantial difference besides in this subsection (f)?

Mr. MORRILL. There is no substantial difference after subsection (f) except section 7 of the old bill is eliminated because it only relates to the taxing provision of the old bill, and section 9 of the new bill is changed in the penalty clause merely to correspond with the change of provisions from a taxing measure to an interstate commerce measure.

Mr. CLARKE. I would like to go into all these in detail and we can not do it now.

Mr. TINCHER. Let us find out how much time is desired by the gentlemen representing the exchanges. Can Mr. Wells tell us?

Mr. WELLS. I will say a very short time. Is it my understanding that you do not care to hear anything at all except on the new features of this proposed legislation?

Mr. TINCHER. That is all. I now make a motion that we hear the other side to-morrow morning.

Mr. RAINEY. I do not think we ought to limit the other side to to-morrow morning's session. If they make an effort to get through as quickly as they can I do not think we ought to limit them.

Mr. TINCHER. Well, as a matter of courtesy to these gentlemen who have come from a distance I am proposing that we give them to-morrow morning, and if it should turn out that they can not possibly get through to-morrow we can decide that then.

(The motion was duly seconded and unanimously adopted.)

The CHAIRMAN. The committee will now stand adjourned until to-morrow morning at 10 o'clock.

(Whereupon, at 12 o'clock and 5 minutes p. m. the committee adjourned until to-morrow, Thursday, June 8, 1922, at 10 o'clock a. m.)

COMMITTEE ON AGRICULTURE,
HOUSE OF REPRESENTATIVES,
Thursday, June 8, 1922.

The committee met at 10 o'clock a. m., Hon. Gilbert N. Haugen (chairman) presiding.

There were present: Mr. Haugen, Mr. Purnell, Mr. Voigt, Mr. McLaughlin of Nebraska, Mr. Riddick, Mr. Tincher, Mr. Williams, Mr. Hays, Mr. Thompson, Mr. Gernerd, Mr. Clague, Mr. Clarke, Mr. Rainey, Mr. Aswell, Mr. Kincheloe, Mr. Jones.

STATEMENT OF HON. WALTER H. NEWTON, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF MINNESOTA.

Mr. NEWTON. Mr. Chairman, as I have to leave for another committee meeting, I would like to make a brief statement in connection with the pending measure.

On page 6 there is a change in the present bill as compared with the provisions in the present law, which, in the judgment of the officials of the State of Minnesota, would seriously interfere with the present method of grain weighing and their own service. I refer specifically to the provision with reference to contract markets and the provision where the Secretary of Agriculture is

given in effect veto power over the action of a State agency. Various protests have come to me from the office of the governor and from the railroad and warehouse commission protesting against subjecting the State service, about which there has been no complaint, so far as I know, to the veto power of a Cabinet officer.

Mr. KINCHELOE. Was not that in the original act?

Mr. NEWTON. No; it was not in the original act.

Mr. KINCHELOE. What section is that?

Mr. CLAGUE. Section 5a.

Mr. NEWTON. Commencing on line 13 of page 6 the change is "and where there is available to such board of trade official weighing and inspection service approved by the Secretary of Agriculture for the purpose." So that on a contract market, if the Secretary of Agriculture does not care to approve the inspection service of the State of Minnesota he withholds his approval, no matter what kind of system we may have. Now, we have the utmost confidence in the present Secretary of Agriculture, but as a matter of principle we do not feel that a State service of this kind, operating under a State law, ought to be subjected to the veto power or the approval of the Secretary of Agriculture.

Mr. KINCHELOE. Did he recognize your State in the original act?

Mr. NEWTON. Oh, yes; there was no trouble at all, but it merely sets a precedent here which it seems to us is a very bad precedent both as it affects this particular business, for one thing, and very bad as a principle of constitutional law.

Mr. JONES. Have you talked that particular phase over with any of the officials of the department?

Mr. NEWTON. I have not; no.

Mr. JONES. You do not know what their attitude is with reference to that change?

Mr. NEWTON. I do not know, because I would prefer talking it over with the members of the committee.

Mr. CLAGUE. Mr. Morrill said yesterday that they really did not intend to make any change. That was the statement he made to Mr. Steenerson, but we prefer to have it as it is in the old law.

Mr. NEWTON. I know they have never had any expressed or announced intention of making any change, but this would establish a precedent which would permit it, and if there should be a change in the office of the Secretary of Agriculture he might think differently from the present Secretary of Agriculture.

Mr. JONES. Do you think there is any great amount of difference in the language.

Mr. NEWTON. Yes; very much so, because in the proposed bill it is all up to whether or not the service is approved by the Secretary of Agriculture.

Mr. JONES. In the original act the language is, "and having recognized official weighing and inspection service."

Mr. NEWTON. But the question of recognition there is a question of fact that is not necessarily to be left arbitrarily to the Secretary of Agriculture.

Mr. JONES. Would not the Secretary of Agriculture under the original act pass on the question? Would he not be the one to pass on the question of having a recognized official weighing and inspection service?

Mr. NEWTON. But not arbitrarily, as he would have the power under the bill as it is written here. Under this language it is made subject to his express approval, and he can approve or disapprove as he sees fit.

Mr. JONES. Under the original act could he not say that it was not a recognized official weighing and inspection service?

Mr. NEWTON. But the word "recognized" is not whether he would recognize it, but whether, as a matter of fact, by custom, by practice of shippers and of buyers that is a recognized market.

The CHAIRMAN. Would you prefer the language in the cotton futures act?

Mr. CLAGUE. No; we want the language in the old grain future act, which is on page 2, the last words in section 5a. "and having recognized official weighing and inspection service."

The CHAIRMAN. I take it that all of us are in favor of the official grades and standards.

Mr. CLAGUE. This does not refer to the grades.

Mr. KINCHELOE. Is not that the language that Mr. Morrill referred to in connection with some southern concern that wanted it, and wanted it in order to get some advertising out of it?

Mr. CLAGUE. I do not recall.

The CHAIRMAN. Let me call your attention to the language of the cotton futures act; the same object is sought to be accomplished in this act:

"Second. Specify the basis grade for the cotton involved in the contract, which shall be one of the grades for which standards are established by the Secretary of Agriculture."

The Secretary establishes the standards. There must be some way of ascertaining the value and quality of the product described in the contract. What standard do you want; the Minnesota standard or the official standard?

Mr. NEWTON. The point here, as I see it, is that under the existing law there has been no complaint, and there has been no announced reason for a change, and here, without any apparent reason for a change, comes a proposed bill, which subjects the whole matter to the absolute approval or disapproval, with reason or without reason, of the Secretary of Agriculture. Now, if there is a reason for that change, we ought to have it.

The CHAIRMAN. There certainly should be no question as to the standards and the grades to be applied. There has to be some standard. Shall it be the Minnesota standard, the Federal standard, or the Kansas standard, or what?

Mr. TINCHER. Mr. Newton, you are going to be here right along?

Mr. NEWTON. Yes; but as I announced at the start, I must now go to another committee meeting, and I wanted to present the protest of the members of the Railroad and Warehouse Commission of Minnesota and also the protest from the governor's office.

Mr. KINCHELOE. My recollection is that Mr. Morrill covered that point very fully yesterday.

Mr. NEWTON. Unfortunately I had to leave before Mr. Morrill concluded and I did not hear his complete statement, but I intended to read it when it was printed.

Mr. KINCHELOE. I do not remember his exact language, but I think he covered that point.

Mr. CLARKE. H's statement with regard to that paragraph was that there were two slight changes in it.

Mr. KINCHELOE. And he gave the reasons for this change when he cited the case of this southern concern.

Mr. CLARKE. Yes; with reference to the publicity and the advertising value connected with it.

Mr. WELLS. Mr. Chairman, as you gentlemen know, it has only been within a few days that this bill has been available to the grain trade of the country; in fact, the latter part of last week before we saw a copy of the bill. We have taken you at your word, as we understood your wishes, and we have not seen fit at this time to call any large number of people to testify before you. We understood you wished to hear comments on the new features of the bill alone. We could have called in a large number of millers and others interested, but we thought that the opinion of all could be expressed by a few, thus saving your time. Mr. Gates, of Chicago, has been over the bill as carefully as any of us, I think, and I would ask that he be heard touching the various new features of the bill.

STATEMENT OF MR. L. F. GATES, MEMBER OF THE FIRM OF LAMSON BROS. & CO., CHICAGO, ILL.

Mr. GATES. Mr. Chairman, yesterday you discussed with a representative of the Department of Agriculture the question as to whether you could legally do this thing. You will not expect me to follow that discussion because I have neither the ability nor the disposition to touch upon the legal phases, but I would like to discuss with you, briefly, as to whether you should do it even if you have the legal right to do it, and what the practical effect of the law would be, touching only on the new features of the bill, in the main, but, briefly, on some of the matters which were up before the Senate committee but which have not been discussed before this committee.

I am sure no one here will seriously expect us to favor a bill of this character, but I would like to go a little further than that and say that we will not approve or favor any bill that carries the degree of control which this bill carries.

This, as I understand it, is not an attempt to regulate commerce in grain—interstate commerce in grain. It is simply an attempt, through the invocation of the commerce act, to put future trading, which is a purely intrastate transaction, under the control of the Secretary of Agriculture.

The first suggestion I have for you, if you will permit me, is on page 2 of the bill, H. R. 11843. You have defined almost everything except what a cooperative association of producers is. Inasmuch as you have included in this bill, section 5, peragraph—certain conditions, and imposed certain conditions in regard to the admission to the exchanges of cooperative societies, and inasmuch as there is a good deal of misunderstanding I think even among the members of this committee from the talks I have had as to what a cooperative association of producers is, I think it might be well to define that just as you defined a board of trade.

On page 3, section 3, line 18, for the first time you attempt to clothe future trading with a national-public interest; in other words, to make a national utility of the future trading on the boards of trade. Now, I believe that is entirely new. I do not believe you have any national-public utilities, as far as I know, nor do I find any indication that the subject matter of this bill is along the line of previous efforts to clothe anything with a public interest; that is, there has been a disposition heretofore when anything was clothed with a national interest to simply specify that it should give service to all alike. Now, there is no claim that the exchanges are not giving service to all alike on equal terms. What, then, is the idea—I simply suggest this for consideration by the committee—of clothing the future trading on boards of trade with a national interest.

We come next to page 4, and among other statements that are made are these:

"That the transactions on such boards are extremely susceptible to speculation, manipulation, and control, and sudden or unreasonable fluctuations in the prices thereof frequently occur as a result of such speculation," and so on and so on, making such business unsafe and uncertain from time to time.

Now, if you will go back over the hearings, you will find that grain men from all over the country came here to testify that this was an essential part of their conducting business safely. There was nothing said about this making it unsafe. There was no testimony anywhere in the record to indicate that there were frequent atttempts at manipulation. It was specified, when it was mentioned at all, that they were of infrequent occurrence, and that they were very difficult to bring about under the conditions under which the market is controlled.

In this section, section 3, you seem to state that the whole purpose of the bill is to do away with speculation, manipulation and control, and yet when you come to your penalty clauses, you do not make such actions criminal at all, but you do make it criminal for a man to carelessly allow, through one of his employees, an inaccurate report to be mailed out. That is a criminal offense, but you do not even make it a criminal offense to manipulate the market. Now, there must be some reason for that, which is not found on the service, and that reason appears to be this: That you do not need any new law in order to prosecute a man who attempts to manipulate or corner the market. In the Patten case the prosecution was under the antitrust law. You have plenty of power to control the matter of manipulation or cornering through the antitrust law. You do not need a new law for that, and yet, as stated here, the whole purpose of the bill is to do away with manipulation and control.

Mr. CLARKE. Just there, for a moment. I have it still in my mind that in the Government's effort to run down these manipulations or corners in these products, the Government was never able to get hold of the information and records of the transaction. Has that, in any way, been cured?

Mr. GATES. That is not true, in the first place.

Mr. CLARKE. Is there now a record that is always available to the Government?

Mr. GATES. There always has been.

Mr. CLARKE. Of every transaction?

Mr. GATES. There always has been.

Mr. CLARKE. I did not realize that.

Mr. GATES. The Federal Trade Commission and the Bureau of Markets have been for five years jointly investigating the grain trade. They have not been denied access to any documents of any kind, so far as I know.

Mr. CLARKE. Are those records with reference to efforts to corner the market like in the Patten corner, available?

Mr. GATES. That would appear from the records of individual houses. The board of trade keeps no record of the transactions of the individual members. The entire history of any cases of that kind, so far as that history has been

written up by historians of the board, is available to anybody, and the documentary evidence in regard to all those things has always been freely at the disposal of governmental agencies, even though there is no legal obligation on the part of the board members to disclose it, except so far as corporations are concerned.

Mr. CLARKE. I am certain, or at least it is my recollection, that in the previous hearings we had on this bill one of the difficulties that the Government contended it had was that they could not get track of many of these transactions in one way or another; that when they tried to run down the details of them they could not get the details like they could with reference to transactions, for instance, on the stock exchange in New York, where there is always a permanent record available, and at the close of business on each day or on the next day there is published a detailed record of the transactions that occurred, where they originated, and the whole scheme of the thing.

Mr. GATES. I think that is a mistake. The New York Stock Exchange, as I understand, records each separate transaction and the volume of it. The individual member of the stock exchange keeps the confidential information as to who the order came from; that is, where the order originated is not disclosed.

Mr. CLARKE. Under your present practices, could the Government run down the origin of every order that goes through your exchange, for instance.

Mr. GATES. Yes; they have done so in the Federal trade investigation.

Mr. CLARKE. How recently?

Mr. GATES. Within the past five years? It has never been denied them although there is no law to give them that authority.

Mr. JONES. I understood one of the witnesses to state, I do not know whether it was Mr. Griffin or not, that they did not keep the records of the individual members who dealt in these transactions.

Mr. GATES. They do not, and I will come to that when I come to the matter of reports.

Mr. TINCHER. Mr. Chairman, in order to facilitate matters, I would like to make this suggestion, if it is agreeable to the witness, that the witness be permitted to finish his statement and each member make notes of such questions as he wants to ask, and after the witness has finished, each one of us will take turns and ask our questions.

Mr. GATES. This question was right in point here. Was there any objection to that?

Mr. TINCHER. I notice that when the witness was before the committee before he asked to be allowed to do that.

Mr. GATES. Yes; I asked that, and it is usually my preference to finish my statement and then gladly to submit to any questioning that any member may have.

The CHAIRMAN. Then you would prefer to conclude your remarks before you are asked questions.

Mr. GATES. The thing I wish to bring home to you is this: That you are not providing any criminal punishment for the thing that is the most serious charge made in your bill. We do not admit the charge, but we say that if you want to stop it you ought to make it at least as serious as it is to carelessly send out an inaccurate report.

There are two courses of action open to the exchanges under the bill as drawn.

Paragraph (a) of section 4, if complied with, will permit the exchanges to function in a very limited way and avoid all this interference by the Department of Agriculture or control by the Department of Agriculture or the necessity of taking out a designation as a contract market, if it is your wish that we should limit our activities to paragraph (a) of section 4; but that would give you a very unsatisfactory market, and there is no one who would suffer from an inadequate market as much as the producer himself.

Subsection (b) of section 4, page 5, is the next paragraph I want to refer to, and I simply wish to suggest this question to the committee: You make a provision there that each board member shall keep such memorandum for a period of three years. The legality of the contract under that language would depend apparently on keeping the memorandum for a period of three years. Now, suppose the transaction is questioned in the meantime, must you wait until the end of three years and then find whether the records are still on hand to determine whether the transaction, when originally made, was legal? If

not, then you might well cut that out. I think the larger part of paragraph (b) is a duplication of what comes later.

Mr. KINCHELOE. Does it not say in that paragraph, "which record shall at all times be open for inspection"?

Mr. GATES. Oh, yes, sure; and you make that provision later on, too, so far as the records are concerned.

Mr. KINCHELOE. Then it would not have to be there for three years?

Mr. GATES. It is provided that each board member shall keep such memorandum for a period of three years. You say that the law shall not apply where such contract is made by or through a member of the board of trade which has been designated by the Secretary of Agriculture as a contract market, if such contract is evidenced by a memorandum, and so on, provided that each member keeps that memorandum for three years. That is made one of the provisions for making the contract a legal contract.

Mr. CLARKE. I do not get that clearly. Just explain that again, please.

Mr. GATES. You provide that a man shall not be subject to all these penalties if the contract is made in a contract market, and if such contract is evidenced by memorandum in writing showing the date, the parties to the contract, their addresses, etc., provided that that record is kept for three years. If you lose the memorandum it would apparently make the transaction, when originally made, illegal; that is, it takes three years to determine whether or not the transaction was legal in the first place.

Mr. JONES. I think that refers to the authority to operate. They must provide for the keeping of these memorandums for three years before the license is granted as contract market.

Mr. GATES. I am just suggesting that to you.

Now, we come to page 6, paragraph (a), and I will read that whole section:

"(a) When located at a terminal market where cash grain of the kind specified in the contracts of sale of grain for future delivery to be executed on such board"—

That is new—

"is sold in sufficient volumes and under such conditions or fairly to reflect the general value of the grain and the differences in value between the various grades of such grain"—

Now, this is new—

"and where there is available to such board of trade official weighing and inspection service approved by the Secretary of Agriculture for the purpose."

Mr. TINCHER. That is new?

Mr. GATES. Yes; that is new.

Now, I think there is a joker in there, if you will permit me, and I think the statement made by the representative of the Secretary of Agriculture yesterday was just a bit weak on that point. He said that they wanted this authority because of the applications to become contract markets made by some little markets that did not trade for future delivery at all. Now, you do not need this authority for that purpose. If you do not need the power, why ask it? If it is not needed in the administration of the bill, why should that have been added to this bill?

Mr. KINCHELOE. Why do you say they do not need it?

Mr. GATES. Because no market applies except such as trade for future delivery.

Mr. KINCHELOE. He said that some of the markets in the Southeastern States did apply.

Mr. GATES. Yes; but they did not trade for future delivery at all, and consequently they did not need it because the bill deals only with markets that deal in grain for future delivery, and consequently such a market would not need the designation of a contract market at all. In other words, this bill is aimed only at exchanges where future trading is conducted. It is not aimed at grain exchanges in general. It does not aim at the control of interstate commerce in grain but simply at the control of those exchanges where future trading is conducted. Now, you do not need any such thing in the designation of a contract market for a market that does not trade for future delivery, do you?

Mr. KINCHELOE. No; that is true.

Mr. JONES. Do not a good many of these small exchanges trade for future delivery?

Mr. GATES. No; there are only seven exchanges in the United States that trade for future delivery—Kansas City, St. Louis, Minneapolis, Duluth, Milwaukee, Toledo, and Chicago.

Mr. JONES. They are the only ones in the country?

Mr. GATES. They are the only ones in the country; yes, sir.

Mr. ASWELL. Is this bill confined exclusively to those seven?

Mr. GATES. Yes; it does not apply to anybody else.

Now, there is also this question involved in that subsection: The question came up, after the passage of the law, when we were discussing with the Department of Agriculture, with regard to its enforcement, as to what the word "official" meant, and the contention of the department was that "official" meant that it must be some governmental weighing and inspection.

Mr. ASWELL. State or Federal.

Mr. GATES. They did not specify which, but it must be a governmental weighing or inspection in order to make it official.

Mr. RIDDICK. It could be a city affair, could it not?

Mr. GATES. The charter of the Chicago Board of Trade gives to the Chicago Board of Trade the right to weigh and gauge, and so on. It also gives the right to inspect. However, that part has been taken over by the State of Illinois, with the exception of the inspection of provisions and flour, which is still the only official inspection in Chicago barring the Federal inspecton of meats.

Through the last 30 years, the Board of Trade of Chicago has conducted a weighing department and has built up a weighing department that commands respect everywhere. It commands respect on the part of the shipper and receiver everywhere. The weights of the Chicago Board of Trade are accepted by the railroads as evidence of what a car contained and claims are paid without question on the basis of those weights, where that is the only thing in question.

We have a pride in that department. We are chartered by the State to do that thing and yet the Department of Agriculture at first did not want to consider that as official weighing. So that the word "official" is material, particularly followed by what has been added, because it would give the Secretary of Agriculture the right to say, "Well, I do not like your weighing and you can not have anything but Federal weighing." If you got into that position and some one wished to add a few hundred retainers to his staff, all he would have to do would be to refuse to acknowledge longer the board of trade weighing and specify that nothing but Federal weighing would meet his approval.

Now, you would have the same thing, and this, I think, is part of the joker, in regard to Federal inspection, instead of Federal supervision of inspection, under the grain grades act. We have Federal supervision now of the State inspection, but this would give an opportunity to substitute Federal inspection for the State inspection and is an invasion of the rights of the State.

Mr. JONES. But the individual would not have the right to require that. It would simply mean that the Secretary of Agriculture could require a change if he thought the thing was not being done fairly. No matter who was doing the official weighing, if the Secretary of Agriculture approved it——

Mr. GATES. If the Secretary of Agriculture approved it, yes; but if he did not want to approve it, if he wanted to build up his own machine, he could do away with the other, could he not?

Mr. JONES. Yes; of course.

Mr. GATES. Now, they have said they do not want to use that power, but they want it put in there. If they do not want to use it, why put it in?

Mr. JONES. Well, it occurs to me that if the Secretary of Agriculture is going to try to regulate these things, he should have the necessary authority, and if the weighing or inspection is not being properly done, he should have the power to require that it be done properly.

Mr. KINCHELOE. What incentive would the Secretary of Agriculture have to take that power away from the State or away from you unless he thought the weighing was not being done correctly?

Mr. GATES. The incentive to build up a political machine, sir. It would give a few hundred additional employees, and more than that, if you made such a change in all the markets.

Mr. KINCHELOE. I think you have got to assume that any public official to whom we delegate authority to administer a law is going to be fair about it. If you do not assume that, we can not have these laws administered at all.

Mr. ASWELL. Could he not be fair and still build up his machine?

Mr. GATES. Sure.

Mr. KINCHELOE. If you gentlemen have been doing this weighing correctly, I do not think it would be fair if he should come in arbitrarily and make such a change simply for the purpose of building up a machine.

Mr. GATES. Let me say that all these things have to be administered by subordinates. The Secretary does not do all these things himself.

Mr. KINCHELOE. That is true.

Mr. GATES. And our experience is that if we get under bureaucratic control in any particular there is always a disposition on the part of the bureaus to put their foot in just a little bit further.

Mr. KINCHELOE. I think you are right about that.

Mr. GATES. And then come to you gentlemen and tell you that it is essential that this be done and they want an additional appropriation so they can extend their activities; is that correct?

Mr. KINCHELOE. Yes; I think that is correct.

Mr. ASWELL. Is not that right and proper for the man in authority?

Mr. GATES. I will not argue that with you, but I bring up the point because I believe there is more involved in this new material than appears on the surface.

Mr. KINCHELOE. Let me ask you this question, Mr. Gates: Suppose that is left out and the Secretary of Agriculture is thoroughly convinced that you gentlemen have ceased to give correct weights, what power would he have in that event?

Mr. GATES. He would have the power to revoke our license as a contract market and that would involve a trial before the three members of the commission, the Attorney General, the Secretary of Commerce, and the Secretary of Agriculture.

Mr. JONES. Underwhat provision of the bill would he have that authority, if you eliminate this language?

Mr. GATES. He can do almost anything. If you leave that the way it was before, it would be exactly the same, so far as that is concerned.

Mr. KINCHELOE. I think they could do away with the market as a contract market.

Mr. CLAGUE. And it is admitted that there has been no complaint. Mr. Morrill admitted that.

Mr. GATES. Yes.

We were given to understand that all that was attempted in this bill was to reenact the old bill under a different power.

Now, this is a serious addition to the bill and I want to call your attention to it.

Mr. TINCHER. You are now talking about paragraph (a)?

Mr. GATES. Section 5, paragraph (a).

Mr. KINCHELOE. Are you addressing yourself now to the first paragraph of the new material or the last?

Mr. GATES. Both parts. The first is coupled with paragraph (f), which is new material also.

Mr. RIDDICK. Your objection to that, as I understand it, is that it gives too much Federal supervision; is that your only objection?

Mr. GATES. It gives too much Federal control, not simply supervision. It gives an opportunity for complete Federal control.

Mr. RIDDICK. On that broad ground, is that your only objection or is there some special danger or menace to your institutions that you fear?

Mr. GATES. I am not convinced that if this were taken advantage of by the Secretary of Agriculture, we would have any better inspection or weighing than we have now. I do not think it would improve conditions.

Mr. KINCHELOE. I do not exactly get your point of view. You say that if this language is put in, it would give absolute authority to the Secretary of Agriculture to take this weighing away from your people and put it under his control.

Mr. GATES. Certainly; all he would have to do would be to say that it was not satisfactory to him.

Mr. KINCHELOE. Then you further contend that even if this language is out of the bill, the Secretary would still have the authoritiy to do that.

Mr. GATES. Oh, no.

Mr. KINCHELOE. You said a while ago that they could reyoke your permit as a contract market, subject to appeal to the three secretaries, and therefore I do not see just what your viewpoint is. If the Secretary of Agriculture, if this language remains in the bill, would have the power to take the weighing away

from you and put it absolutely in the hands of the Department of Agriculture, and if the language was not in here, he would still have that power under the general powers granted to him under the bill, why could he not exercise that general power even though this language was stricken out of the bill.

Mr. GATES. In that case, it would revert to the State. It would not revert to the Nation. It would not revert to the Secretary of Agriculture.

Mr. KINCHELOE. In what case.

Mr. GATES. In case he took it away from the board of trade's weighing department, the right to weigh would revert to the State, would it not? The State has delegated to the board of trade, through its charter, the right to weigh.

Mr. KINCHELOE. I do not know whether you get may viewpoint or whether I understand yours.

Mr. GATES. I think I do.

Mr. KINCHELOE. If this new paragraph or this new amendment remains in the bill, of course, the Secretary would have the right and the power to take away the weighing from your people.

Mr. GATES. Yes.

Mr. KINCHELOE. Now, I understood you to say a while ago that even if that language is taken out of the bill, under the general powers granted under the bill, he would have that right anyway, subject to appeal to the three secretaries.

Mr. GATES. I may be wrong about that, Judge——

Mr. KINCHELOE. The point I had in mind was that if he still has that power, what difference would it make whether this langauge was in or out of the bill.

Mr. JONES. I understood him to say that the Secretary would have the right to do away with that market as a contract market.

Mr. GATES. My understanding is that upon complaint and upon giving notice he can take away the designation as a contract market subject to appeal.

Now, may I call your attention to page 6, paragraph (b). The original bill as it passed the Senate did not read as this reads, but this was reinserted by the House conferees and passed to include the following:

"(b) When the governing board thereof provides for the making and filing by the board or any member thereof, as the Secretary of Agriculture may direct, of reports in accordance with the rules and regulations," etc.

This was explained very carefully to the Senate committee and the Senate committee decided that it was fair and the Secretary of Agriculture agreed that it was fair, that the board should decide whether the members should make those reports or the board itself, and to clear that up, I just want to say this: The boards of trade are governed by boards of directors and officers who serve without compensation. They are competitors of other members of the association. The members seriously object to disclosing the details of their own business to their competitors, even though their competitors may at that time be officers of the association.

Mr. KINCHELOE. I remember that point very well when it was discussed by Mr. Griffin when he was on the stand, and I thought he practically conceded that it was cured by the next sentence following, "and in such manner and form and at such times as may be prescribed by the Secretary of Agriculture."

Mr. GATES. Yes; but you have added new material here, on page 7, in line 9, where you have said, "including the persons for whom made." You have included those new words which mean that the names of your customers, which are confidential as between principal and agent, would be disclosed to your competitors who might be officers of the board.

Mr. JONES. Not necessarily so, at all. They would have to keep a record of it, but they would not have to be made known to their competitors. The Secretary of Agriculture could simply see them.

Mr. GATES. If the Secretary of Agriculture is going to require the board itself to report for all the members, how can the board get that information except by getting it from the members?

Mr. JONES. They could get it from the members, but they would not have to furnish information as to any one member.

Mr. KINCHELOE. That is, to any other member of the exchange.

Mr. TINCHER. Mr. Gates, we went over this pretty thoroughly before. I do not know whether you were here or not, but this is the way we figured it out: The board can regulate its own members. There is not any question but what the board could request them to make certain reports, and they would make them do it because they would have to comply with the regulations of the board in order to remain members of the board, and to avoid the proposition

you are talking about, it was conceded that the fairest thing that the Secretary of Agriculture could do would be to let the board require the members to make their reports sealed, ready to be turned over to the Secretary of Agriculture, and, of course, the other members need not know the names; that is, the board would not need to go into that matter itself. The proposition involved there is that the regulation is not worth anything unless they do know who is making these trades. There are men who trade on the Chicago Exchange that are so situated that they can buy and sell as much wheat in the course of a day as they want to, without any expense at all. They can make their deals themselves in buying and selling.

Mr. GATES. Mr. Tincher, there was no objection originally to the Government having all the details on those transactions but——

Mr. TINCHER (interposing). The only thing contemplated by this change is to give the Secretary of Agriculture in these reports the name of the man who is making the deal instead of leaving that part of it blank. We went over that matter pretty carefully, and I think Mr. Griffin finally agreed that if the board requested these reports, the board could furnish the reports to the Secretary of Agriculture without examining them, because they would be sealed up.

Mr. GATES. If you are going to provide for it in that way, then you ought to put it in here that the board is to be simply a forwarding agency.

Mr. TINCHER. That is left to the board itself in the bill as it is now. The board can handle that itself, and if it does want to examine the members' reports it can do it, and if it does not want to examine them they can have them furnished sealed up and simply forward them to the Secretary.

Mr. GATES. But the Secretary of Agriculture has the right to prescribe the form. He might say that it was the duty of the board itself to summarize these reports and get them in certain form for forwarding to the Department of Agriculture, because that would save the Department of Agiculture some work.

Mr. TINCHER. That is not the only point. It is not simply to save the Secretary of Agriculture work, but the board can always get what it wants from one of its own members without any particular trouble.

Mr. GATES. But there was not any complaint about that originally, was there?

Mr. TINCHER. No; the only thing that has been added to the bill are the words "including the persons for whom made," and I think that is material, if the Secretary takes a notion he wants it.

Mr. GATES. There is no objection to his having it, but there is objection to it if you have it in such language so that the board must furnish the information in whatever form the Secretary of Agriculture may prescribe, which might make it necessary for the board officials to know the details of those transactions.

Mr. JONES. I think the original bill provided for that. The original bill contained the language, "showing the parties to all such transactions." If you do that, that would include the names of the individuals who took part in the transaction.

Mr. GATES. No, sir.

Mr. JONES. I do not see how the adding of this clause makes it any stronger than the original bill, because under the original bill they were required to make reports showing the parties to all such transactions.

Mr. GATES. All right. Let me say this: That the parties to a contract on the board of trade must be members of the board. The parties to one of these contracts, we will say, are Hulburd, Warren & Chandler, and Lamson Bros. & Co. Now, that does not disclose the origin of that order, does it?

Mr. JONES. Not necessarily.

Mr. GATES. So that does add materially to it and makes it more objectionable that the detailed information should fall into the hands of competitors.

Mr. JONES. Well, let us go a little bit further. If the two men you mentioned made a transaction for another party, would not the report to the Secretary, under that provision, show all the parties to the transaction? Would he also require, under that, a disclosure of for whom the transaction was made? If you make it for another party, would not that party really be a party to the transaction?

Mr. GATES. Yes; he is the principal; the other is his agent. The name of the agent is given in the transaction. They take the board of trade parties to the contract.

I think the Secretary ought to have that. I think that if he is going to have any report at all he ought to have the names of the persons for whom the

transaction is made, but I doubt seriously the wisdom of having that done through the board. All the Secretary wants is to get the reports. He has told us so, and he agreed to a change in the feature of the bill, so that the members might furnish the reports, but it would be obligatory on the board to require its members to furnish the reports just the same. All the Secretary cares about is to get the report. But we object to having the details of our business transactions disclosed to our competitors, who are officers of the board.

Mr. JONES. I can see your distinction all right.

Mr. GERNERD. Let me ask you this, Mr. Gates: Is it possible for the Secretary to obtain the desired information in the manner you have indicated?

Mr. GATES. Not now; no. This bill would require the boards to pass a rule giving the officers of the board that power.

Mr. GERNERD. All right. Following that up, would it not follow that if the bill does not give him that authority and he is after certain definite information which would disclose a violation of the law, he could not obtain it?

Mr. GATES. No; because before you could become a contract market you would have to have a rule passed which would require members to submit a report to the Secretary of Agriculture direct whenever the Secretary called for such a report.

Mr. KINCHELOE. Your idea is that the member of the board ought to send it in to the Secretary of Agriculture, instead of the board of trade?

Mr. GATES. Exactly; and that it ought not to be placed in such a position that the board members would have either the opportunity or the obligation to become familiar with the details of those transactions.

Mr. GERNERD. Has the Secretary's viewpoint on that controversial point been obtained?

Mr. GATES. It was before, yes; and he was entirely satisfied if he got the report. He did not care whether the board made it or the members. The bill as it passed the Senate read that the report should be made by the board or any member thereof, as the governing board should elect. That is, each board of trade should determine whether the members were to send it direct or whether the members should have it sent to the secretary of the board and he forward it.

Mr. JONES. The original bill provided, "made by the board or any member thereof, as the Secretary of Agriculture may direct."

Mr. GATES. That is the law. I am talking about the bill as it passed the Senate. It was changed back in conference.

Mr. KINCHELOE. That was the Senate provision you were talking about. They knocked out the substitute in conference?

Mr. GATES. Yes. Even though the Secretary had expressed his entire approval of the provision, the governing board of the exchange might elect which way it would send the report.

Mr. KINCHELOE. What do you think of this section as it is with those words eliminated "including the persons for whom made"?

Mr. GATES. I think there ought to be no question about the Secretary having the right to that information, but it makes it doubly objectionable to have such information pass through the board.

Mr. KINCHELOE. I remember that we went into that very thoroughly before, and I do not think there is any disposition on the part of the committee to compel competitors on the board to reveal to each other their transactions. The object was only to give the Secretary power to get the information.

Mr. JONES. According to your construction, then, if we change the third line of subsection (b), striking out "as the Secretary of Agriculture may direct" and inserting "as the board may determine," it would meet your approval?

Mr. GATES. If it were as it first passed in the Senate before it reached the conference, which was agreed upon by the Secretary of Agriculture, then there might be included the words "including the persons for whom made."

Mr. WELLS. I might say on this point that after the passage of the future trading act, the grain exchanges met with the Secretary of Agriculture and his solicitor and agreed upon rules which would be passed by the exchanges as fulfilling the requirements for a contract market, and the rule with reference to reports provided for the submission of reports by the members and not by the boards themselves. That was entirely acceptable to the Secretary, and that was what we had been working under up until May 15.

The CHAIRMAN. How many members are there of these boards?

Mr. GATES. We have 1,600 members in our board.

The CHAIRMAN. In the seven exchanges, how many would there be altogether? Can you approximate it?

Mr. GATES. Oh, probably as many more in the other six.

Mr. KINCHELOE. In each of them?

Mr. GATES. No; not in each—the total.

The CHAIRMAN. So if the reports should be made by the members, the Secretary would probably have 10,000 reports to consider, would he not?

Mr. GATES. Yes; but the documents would be the same, if Congressman Tincher's idea should prevail that the board would simply be a forwarding agency—they would be sent in under seal.

The CHAIRMAN. My thought is this, that that expense should be borne by the exchanges instead of by the department.

Mr. GATES. Well, it is the department that wants the information, is it not?

The CHAIRMAN. But they should have it in such a form that it would not require a large number of people to compile the reports.

Mr. GATES. It is supposed to be in the national interest, and you should not impose that heavy expense on the individual. It amounts to a tax.

Mr. TINCHER. Mr. Gates, here is the issue, as I understand it. If a member of the Chicago Exchange does not make the reports required by your regulations, which you must have to be designated as a market place, the Secretary of Agriculture should not be required to deal with that man; he should have the power to deal with the board.

Mr. GATES. All he would have to do would be to notify us to inflict the discipline provided for by the rule, and if we did not do it, then he could take away the designation.

Mr. TINCHER. I do not think there will be much disagreement about that, because you say you have no objection to the words "including the persons to whom made."

Mr. GATES. I said we would not object to that if the other were changed.

Mr. TINCHER. I see. Well, I do not think there will be much quarrel over that proposition.

The CHAIRMAN. Do you now suggest that it should be left to the discretion of the board instead of the Secretary?

Mr. GATES. Left to the discretion of the board as to whether the reports are to be forwarded to the Secretary by the individual members or by the board.

The CHAIRMAN. And the form in which they shall be presented?

Mr. GATES. Well, the Secretary would prescribe the form.

The CHAIRMAN. You suggested a change. What is your suggestion?

Mr. GATES. I suggested that it be changed so that it would read as it did when it passed the Senate before the conference.

The CHAIRMAN. That leaves it to the exchanges instead of to the Secretary?

Mr. GATES. Exactly.

The CHAIRMAN. Well, then, why do you not leave the whole regulation to the exchanges instead of to the Secretary?

Mr. GATES. I would do that myself, Mr. Chairman [laughter], but that would not be in line with the idea of the people that framed this bill.

The CHAIRMAN. I think we all agree that the bill as amended in the Senate would have been perfectly harmless.

Mr. GATES. I can not agree with you there, either.

The CHAIRMAN. We think we ought to leave it to some representative of the Government. If the reports and everything are to be left to the exchanges, of course that would be perfectly satisfactory to the exchanges.

Mr. GATES. This does not do anything except to remove one burden from the exchange—one cause of dissatisfaction with the law.

Mr. JONES. I understand that you are willing to give him the information that is provided for; you just simply want a different method of giving that identical information?

Mr. GATES. We are willing to give it to the Secretary.

Mr. KINCHELOE. And you want the members to do it?

Mr. GATES. Yes.

Mr. JONES. You want the Secretary to have the information, but you would prefer, instead of giving it to the Secretary through the board, to have it given by the individual member?

Mr. GATES. Yes; and I can not make that as clear to you or as forcible as it would appear to you if you were a member of one of these exchanges and knew the feeling in regard to that disclosure of information to the officers of the board. Now, we were compelled to do that under the Food Administration, as

a war measure, and there was not a time when there was a request for a report that there was not a serious protest from the trade in regard to it.

Mr. TINCHER. The whole object of the bill has been that the Secretary might have this information. It was not with a view of disturbing the exchange.

Mr. GATES. No.

Mr. TINCHER. Now, you have said, and I think correctly, that the information should include the names of the persons for whom the deal was made. But I can not attach so much importance to the question whether the members or the officers of the exchange are permitted to examine that or have an opportunity to examine it, or whether they forward it on without examining it. I have always contemplated that if a member of the exchange submitted to the officers a report required by the Secretary of Agriculture there would not be such a thing as taking that report and examining it. However, if you wanted to say "sealed," as I told Mr. Griffith, I do not see any particular objection.

Mr. GATES. But here—the Secretary has the power also to prescribe the form. He might tell the board, if he were asking for a report from the board, to give a summary of the whole thing. For illustration, here is a man who is, we will say, trying to manipulate and is dealing through a member's house. The board would be required to accumulate that information, showing the net amount that each individual trader was net long or short. Do you see what I mean? It would be necessary in that event for the officers of the board to know the details of all those transactions, would it not? Otherwise they could not make such a report. That is what I object to.

Mr. TINCHER. Well, so long as there is a law like that, giving the Secretary that authority, I have always contended that there would not be any manipulation, because a board can put the fear of God into the fellows that are manipulating, and if there is a heavy enough weight hanging over their heads there will not be any manipulation.

Mr. GATES. Well, that is aside from this question. This is the question of getting the reports——

Mr. TINCHER. To prevent manipulation.

Mr. GATES. For whatever purpose they desire to use them for.

Mr. TINCHER. You suggested a while ago that this bill does not prescribe a penalty, that it does not provide a punishment for manipulating the market. You are entirely right about that, because we have a law now that does that. The object of this bill was not to punish some man that manipulated the market, but to prevent manipulation.

Mr. GATES. Yes; but even though you assume it will prevent it, you have no penalty for it.

Mr. TINCHER. Well, we have a Federal law that provides a penalty for it, and that law does not prevent it.

Mr. JONES. But the Secretary could check the manipulation by the power he would have to deprive the board of the right to operate?

Mr. GATES. Certainly.

Mr. JONES. The Secretary is given that authority under another provision of the bill, if they do not comply with the rules.

Mr. GATES. But they can not punish the board for the manipulation of an individual. Furthermore, the rules in regard to manipulation would have to be passed by the board.

Mr. TINCHER. We spent quite a lot of time on that before, Mr. Gates, and I am sure every member of the committee has gone into it in considerable detail. Suppose you proceed to your next suggestion.

Mr. GATES. Page 7, line 18, and following. I wish to call the attention of the members of the committee to certain phases of that. Possibly I had better read it. [Reading:]

"When the governing board thereof provides for the prevention of dissemination through the mails or in interstate commerce or by telegraph, telephone, wireless, or other means of communication, by the board or any member thereof, of false, misleading, or inaccurate reports concerning crop or market information or conditions that affect or tend to affect the price of grain in interstate commerce."

That is new material.

Mr. TINCHER. Oh, no.

Mr. GATES. Yes; you did not say anything about the mails.

Mr. KINCHELOE. Yes; beginning with "provides" it is new.

Mr. GATES. Beginning with "provides" and down to "communication."

Mr. TINCHER. The reason I said it was not new is this: I have never understood that the exchanges objected to having rules and regulations of their own to prevent the sending out in any form of false market reports.

Mr. GATES. I think you are right in your understanding. I read this with the idea of explaining a little about it.

Anyone but a member of a board of trade may do that thing. It would not prevent a Dow-Jones report, for instance, that might be misleading or false. Furthermore, it goes so far as to prevent any member of the board from sending out a Government crop report. Why? Because——

Mr. TINCHER (interposing). Do you make that statement on the assumption that they are inaccurate?

Mr. GATES. I do not have to prove that the Government crop reports are inaccurate because they are admitted to be so by the department itself. Last December, after a year had elapsed since they made their supposedly final report on the crop of 1920, they came out with a correction showing there were millions and millions of bushels more wheat than they had given as their final estimate of the crop. That was an inaccurate report. They admitted it was inaccurate and corrected it a year later.

Mr. TINCHER. I think the Department of Agriculture should be complimented, because I believe that is the first time that the Department of Agriculture ever had an inaccurate report that favored the producer.

Mr. GATES. But that is aside from this question, which involves the matter of sending out inaccurate reports.

Now, a crop estimate is necessarily inaccurate to a certain extent; it is in its nature to be so. The Government report is no exception. You can not have an accurate crop report; it is impossible. But you make it a criminal offense for a man to send out any inaccurate report.

Mr. CLARKE. That is limited to board members, is it not?

Mr. GATES. Yes; anybody else can send them out.

Mr. TINCHER. Does it make it a criminal offense for them to send them out?

Mr. GATES. Yes; you will find that in section 9.

Mr. CLARKE. Why limit it to members of the board?

Mr. GATES. I simply call attention to that, because I thought possibly you might not wish to have it appear just that way.

Now we come to page 8——

Mr. VOIGT (interposing). Just wait a minute there. Is it not a criminal offense on the part of the board for a member to send out any misleading information?

Mr. GATES. "By the board or any member thereof."

Mr. VOIGT. All that the board has to do under this subsection is to adopt a proper rule for the guidance of its members. When the board has done that the board has performed its duty and can not be liable to any criminal prosecution.

Mr. GATES. All right; but you come to section 9 and you find that the penalty is for "carelessly" sending out an inaccurate report. Then you refer to the definition in the first part of the bill, and it says that the act of any employee within the scope of his employment is the act of the member of the board. If a stenographer makes a mistake in copying a Government report——

Mr. VOIGT. You do not get my point. All that is required by this subsection is that the board shall adopt a proper rule to prevent its members from sending out false and inaccurate information. When the board has made that rule for the guidance of its members the board has performed its duty, and I do not see how it can then be liable to any criminal prosecution.

Mr. GATES. All right. I am speaking as a member of the board. I am not protected. Suppose the board is protected; I am not. I am a member.

Mr. VOIGT. You mean an individual member?

Mr. GATES. I am an individual member—a member of a firm that is in the commission business.

Mr. VOIGT. Let me ask you just one more question. Suppose that as a member of a board of trade you send out a circular letter giving information furnished by the Department of Agriculture, and that information subsequently turns out to be inaccurate: Do you have any idea that any court or any jury would find you guilty of sending out inaccurate information?

Mr. GATES. I do believe they would; I would put up a dickens of a fight on it. But I am showing you how far you are going on that thing.

Mr. GERNERD. Do you mean to say that we should be silent on that subject?

Mr. GATES. I do not say that. But if you are going to speak at all, the language of the old bill is sufficient, without excluding this stuff from the mail. I have never heard of excluding material of this kind from the mails. You are not making a general law to exclude such material from the mails, but only as relates to board of trade members. You restrict board members in using the mails, but nobody else. Anybody else can send out as much misleading information as he desires.

Mr. TINCHER. How much attention has been paid to some individual's information? I remember just before this law came into effect there was an instance where there was a telegram sent out from a member of the exchange in Chicago as to the number of cars of wheat in Galveston, and that had a very disastrous effect upon some markets. No individual could have got anywhere with that information. You know there have been instances—of course, you will recall hundreds of them where I can recall one—where this evil of sending out false reports has had great effect.

Mr. GATES. We are not questioning that; and as Mr. Morrill told you yesterday that he had had full cooperation from the exchanges in regard to the matter of minimizing false or fictitious or inaccurate reports. But I am calling attention to the fact that in this you exclude from the mails material that is put in by members of the board——

Mr. CLARKE. Why not make it general in its application?

Mr. GATES (continuing). And do not apply it to other people. You go so far even as to make it "inaccurate," which includes Government reports.

Mr. TINCHER. Oh, well, I do not believe you are afraid or that anybody else would be afraid.

Mr. GATES. Well, I call your attention to it. I am not writing the bill at all.

Mr. TINCHER. Personally, I will say this to you: That I can not fully see the merit of barring anything from the mails. The reports that go out in the mails are not the reports that raise Cain in the markets.

Mr. GATES. Why, some of the most disastrous things we have ever had on the Chicago Board of Trade have been due to stuff that has been sent through the mails anonymously.

Page 8, paragraph (e). That is the one relating to the admission of cooperative societies. I wish to call the attention of the committee to this, that it is not the local cooperative society that the boards of trade have reference to in making this objection. The members of this committee have referred to local cooperative societies. That is not it. The objection on the part of the boards of trade have been to a national organization that does business on the basis of a monopolistic contract and seeks entrance to the exchange on a preferential basis.

Now, in line with our promise to you when we were here before, and in line with a suggestion that was made in November at a conference called by the Secretary of Agriculture, there was a committee appointed—three members representing farm organizations and three members representing the exchanges. The farm organization members were: Clifford Thorne, for the American Farm Bureau; Mr. Shorthill, secretary of the National Farmers' Elevator Companies—that is, the small farmers' elevator companies all over the country—and Mr. Mell, who is the personal representative of Mr. Gustafson, president of the United States Grain Growers' Association. Then there were three representatives of the exchanges to represent that side——

Mr. PURNELL. Who were the representatives of the exchanges—since you have put the other names in?

Mr. GATES. Mr. Frederick B. Wells; Charles W. Lonsdale, of Kansas City, Mo.; and myself.

The idea was—and it was widely advertised—that that committee would receive any complaint in regard to the marketing of grain through the exchanges. That committee has, since it was formed, placed before the exchanges, and all the exchanges that trade for future delivery in the country have adopted, a rule suggested by that joint committee. That committee was formed for the purpose of threshing out any questions of difference and trying to bring the producer and the marketing machinery together on the basis of mutual help.

Now, if you will pardon me for saying so, I believe that so far as that phase of the situation is concerned, that committee, not because of its present make-up—it will be a continuous thing, and holds four stated meetings each year, with special meetings called from time to time—that committee will go further in the next five years in adjusting differences between producers and

the marketing machinery than any legislation that you can possibly pass. And I say that not without compliment to this committee, not questioning at all the general intelligence of this committee, but because when we get half a dozen men who are thoroughly familiar with a subject to be discussed and who know what they want, with their feet under the same table, in frank discussion of a thing that there is some difference of opinion about and arrive at a conclusion, you have got something that will work instead of something that is purely theoretical.

Now, then, one question that was brought up and which has been discussed by all of the exchanges is the question of trading by farmers' elevators. It was found, for instance, that a good many farmers' elevators had lost a lot of money in the last two years because they had not been using the hedging market; they had been speculating on the cash grain. That is true of scores and scores of elevators throughout the West. There was a feeling on the part of a good many of the farmers' people that they did not dare trust their managers to trade for fear they would get to trading on the company money. There had been several instances where managers had traded with the company money.

So the rule was suggested to the exchanges that no nonmember corporation should be permitted to trade through any member of an exchange until there had been filed with the member who was to execute the trade a resolution by the corporation itself designating the people who were authorized to give orders, and also providing that duplicate copies of the confirmation should be sent to some officer, whose name was mentioned, other than the man giving the orders. That would give the country elevators a chance to check up all the time through some other officer on what the manager was doing, and would make them feel safe in doing their hedging and so protecting themselves in their regular transactions. At the same time the board member was protected because of having the authority from the corporation itself, by a resolution of the board of directors or a resolution of the stockholders.

I simply cite that as an instance of what has been worked out. Other matters are up for consideration. The matter of the terms under which cooperative societies might be admitted to boards of trade is the next subject for discussion, and a special meeting has been called for late this month by the acting chairman, Mr. Mell. I mention that because I believe—and I think Mr. Morrill gave you to believe yesterday—that he had some grave doubts as to whether subsection (e) has any place in this bill at all.

Mr. KINCHELOE. Have any of the farmers' organizations become members of the board since the enactment of this original law?

Mr. GATES. I do not know that any have yet become members. I do not know that any have yet applied for admission.

Mr. JONES. The reason for which they have been excluded heretofore is the fact that they have reapportioned some of their commissions?

Mr. GATES. Rebated commissions, as we call it. They call it "patronage profit."

Mr. JONES. That is practically the only thing that excluded these cooperative associations from membership?

Mr. GATES. Absolutely.

Mr. JONES. So the only part of this that you object to is the proviso that no rule of a contract market against rebating commissions shall apply to the distribution of excess earnings among the bona fide members of any such cooperative association?

Mr. GATES. Yes; that proviso is the thing that the exchanges have always objected to ever since this legislation was proposed—any preferential treatment by which they might solicit business on a different basis from other members of the board.

Mr. KINCHELOE. You say that there have been, to your knowledge, no applications from these organizations to become members of the board?

Mr. GATES. Not so far as I know. Have you had any in your market, Mr. Wells?

Mr. WELLS. No.

Mr. KINCHELOE. I got the impression at the last hearing that there was a great demand from these organizations for membership on these boards.

Mr. JONES. As I understand it, your rules prohibit the rebating of these commissions. I suppose the reason they do not apply is because your rules forbid that.

Mr. GATES. They can tell better about that than I. I do not know their reasons.

Mr. JONES. They knew your rules would not let them in.

Mr. RIDDICK. About a year ago were there not requests from some of these organizations to join your board?

Mr. GATES. No, sir. That was widely advertised, but there never was any application made. As a matter of fact, as I understand it, they have not developed their marketing machinery sufficient to go in.

Mr. KINCHELOE. The point I was making is that that same proviso is in the original act. Now, since this proviso was in the original act have there been any applications from these farm organizations to become members—since the enactment of the original act?

Mr. GATES. No.

Mr. TINCHER. You know the Missouri law on that subject is still before the courts.

Mr. JONES. Yes; the law is still in the air on that.

Mr. GATES. There is a Missouri law on this same thing which has been questioned in the United States district court in Missouri and is now before the circuit court. The district court, as I understand it, has granted an injunction against the enforcement of the act, and the case is now before the circuit court in Missouri.

Mr. KINCHELOE. Is that the court of appeals out there?

Mr. GATES. The circuit court of appeals; yes.

Mr. KINCHELOE. That is the highest tribunal of the State?

Mr. TINCHER. It is not a state court; it is the Circuit Court Appeals of the United States.

Mr. GATES. An injunction was granted by the district court by three Federal judges.

Mr. CLAGUE. Do you have any cooperative societies belonging to your Chicago board?

Mr. GATES. Why, yes; what we have always called cooperative societies. There is now a disposition not to call them cooperative societies, but they are individual farmers' elevator companies.

Mr. KINCHELOE. Do they distribute their profits back to the memebrs?

Mr. GATES. Well, they have not had that idea until recently in the territory that Chicago serves. One of the concerns that is a member of the board is the Canadian Grain Growers' Export Co. That is one of their companies to handle the cooperative marketing in Canada, as I understand it.

Mr. JONES. I have no doubt that if this law were enacted and all the legal objections cleared away, these cooperative associations would apply for membership.

Mr. GATES. They did not apply after the former bill was passed.

Mr. VOIGT. Is there any cooperative organization or a member of an organization which is a member of your board which distributes back profits to the members of the cooperative associations?

Mr. GATES. Not so far as I know, Congressman Voigt.

Mr. VOIGT. They have applied for membership?

Mr. GATES. I think not; no.

Mr. VOIGT. You have had no application whatever in the past from any organization or a member of any organization which distributes back profits?

Mr. GATES. No, sir; never, so far as I know, in Chicago. Am I right, Secretary Mauff?

Mr. MAUFF. Absolutely.

Mr. TINCHER. What does your membership sell for?

Mr. GATES. I think it is around $6,500.

Mr. MAUFF. The last sale was $6,000.

Mr. VOIGT. And up to this time this has only been a theoretical question in your exchange?

Mr. GATES. Yes.

Mr. VOIGT. Has your board or any member of it at any time discouraged any such cooperative association or a member of such association from making application to become a member of your exchange?

Mr. GATES. Not unless our statements before this committee and the Senate committee could be considered as discouraging their applications.

Mr. VOIGT. Has there been any individual case where you have discouraged anyone from making application?

Mr. GATES. Of course. I have not full information, but so far as I know there has been no such discouragement—that is, in any individual case. I know of no individual case.

Mr. KINCHELOE. Of course, Mr. Voigt, you mean since this original act?

Mr. VOIGT. I mean at any time in the past.

Mr. KINCHELOE. The rules absolutely forbade their becoming members of it.

Mr. JONES. It seems to me that that is the most persuasive sort of discouragement.

Mr. KINCHELOE. I would take it, of course, that there would be no applications when they knew the rule forbade it. That was the reason I was asking whether there had been any applications since the enactment of the original act. He says not.

Mr. CLAGUE. I do not think there would be as many at Chicago as there would be at Minneapolis, for instance.

Mr. TINCHER. This matter has been in the courts, and naturally nobody would want to pay $6,000 for a membership with the prospect of getting into a controversy.

Mr. KINCHELOE. When was that action originally filed?

Mr. TINCHER. It was filed simultaneously at the time the act was put into effect.

Mr. KINCHELOE. It was approved August 24, 1921.

Mr. TINCHER. Well, they filed it before December 24. The act was not to take effect for four months.

What do you say, Mr. Gates, about subsection (f)?

Mr. GATES. Subsection (f) is all new material.

I do not know from a reading of this whether it is your intention to delegate to the Secretary of Agriculture the power which resides only with Congress to interfere with the completion of contracts or what your wish is in that respect, but in this language you give to the secretary the right to change the terms and conditions and forms of contracts. Mr. Morrill expressed that yesterday by saying it would give them the right to determine what should be the contract grades deliverable, and at what discounts or premiums other grades could be applied, and also to control the matter of public storage in these markets.

Now, I do not see any reason why, in a bill that is supposed to be simply a reenactment, under the commerce clause, of the old bill, you should introduce any such radically new material as this. That is a thing that would take away from contracting parties the right to agree among themselves as to the terms under which they will contract. Members of the board could not arrange among themselves as to what grades should be deliverable on a contract. The Secretary would have the right to say what grade might be delivered, and if he were going to use this power at all he could not use it until the month of delivery came around, and then he would specify what the grades should be and what the conditions should be. He would probably have to change it during the month of delivery.

The situation in grain is very different from the situation in cotton. In grain the grain standards act has divided the grains into so many different grades, so many subgrades, that in order to provide a wide market you have to provide a good many different kinds of grades, which are Federal grades, for the fulfillment of contracts, in order to give the man who has hedged a chance to deliver the kind of stuff he has. By this, as I understand it, you would give the Secretary of Agriculture—not before the contract is made but at the time for the fulfillment of the contract—the right to change the conditions of the contract.

Mr. KINCHELOE. Give him retroactive power?

Mr. GATES. Absolutely so. I am just a layman, but it seems to me it gives him the right—and I think that was the statement Mr. Morrill made yesterday—to change the conditions of the contract as they were entered into and change them when the time of delivery comes.

Mr. TINCHER. Well, I do not so understand it. That is clearly not within the language of section (f). The only thing it has to do with is when you apply for designation as a market. Then section (f) says you must have a rule adopted by a Government board, which provides for making such changes from time to time in the terms of the provisions of the forms of contracts of sale to be executed on or subject to the rules of such board as may be necessary to remove or overcome any material prejudice or disadvantage to sellers or buyers thereof found by the Secretary of Agriculture after investigation and public hearing and communicated by him to such board.

He investigates, and he finds that the form of contract which you are using is working a prejudice and a disadvantage to sellers and buyers, and that is communicated to such board. Then your rule must reserve the right to change

the form of that contract. To say that that gives the Secretary of Agriculture the retroactive right to go back and change some contract that has been made——

Mr. GATES. You heard what Mr. Morrill said yesterday?

Mr. TINCHER. Yes; I heard that.

Mr. GATES. How could it be effective at all unless it were to be applied during the month of delivery? Because commercial conditions could not be known in advance. He proposes to effct it on the basis of commercial conditions at that time.

Mr. TINCHER. But here is what it says: After a hearing, a public hearing, he finds that you are using a form of contract that is unfair or that works a prejudice and disadvantage. Then you have got to have in your application for designation as a marketing place a provision that you will require a change. Who fixes the forms of your contracts now? Do you not have a uniform form?

Mr. GATES. The contract form is determined by the board.

Mr. TINCHER. But the rules of the board provide the form of contract, do they not?

Mr. GATES. Yes, sir.

Mr. TINCHER. You are working under a form of contract now fixed by the rules of the board?

Mr. GATES. Yes, sir; and they are known to everybody that makes a contract at the time he makes his contract.

Mr. TINCHER. Well, I do not care to argue it; but I declare I do not see where you find anything in that provision that permits anybody to go back and change a contract existing between two men.

Mr. GATES. It takes away our right to pass our own rules and agree upon what the terms of our contracts shall be.

Mr. KINCHELOE. Mr. Gates, do you not think that if the Secretary of Agriculture, after a hearing, becomes acquainted with all the facts that enter into a contract, and after a hearing is of the opinion that it renders the contract hazardous and unreliable, so far as it affects the hedge, he ought to have some power to change it?

Mr. GATES. I have not so much confidence in the outcome of that as some of those who drew this bill. There may be a hearing required, but they do not always abide by the facts brought out at the hearing. They cause an investigation to be made, but they do not necessarily abide by the views of the people who make the investigation. They go to some extent on their preconceived notion or they try to get the evidence to back up the notion they have already arrived at as to what should be done.

Mr. KINCHELOE. That goes back to the fundamental proposition that I intimated this morning. If you are going to delegate the administration of an act to some official, you have got to assume that the official is going to be fair, and if you do not assume that, why, you can not administer any law of Congress that designates a certain official to administer it.

Mr. TINCHER. Suppose, Mr. Gates, it should go out to the country this morning, to the men in the grain business that know you and have confidence in you, that you had said before this committee that if we pass this bill it would give the Secretary of Agriculture power to disturb a contract existing between two men. That would have weight; that would create a prejudice against this bill. Nothing like that is in the bill or can be read into it in any shape or form.

Mr. GATES. I am just a layman, but I think that this whole bill will require years of litigation to determine just what it does mean, because of those facts. Mr. Morrill stated what he thinks that section means, and I am going by what he says. I infer from what he says that since they have the right to establish our grades, to say what grades shall be deliverable on contracts and at what discounts or premiums, that part of that work can not be done previous to the time the contract is made. Therefore the terms of the contract must be changed.

Mr. TINCHER. You are using a form of contract that is prescribed by the board. All the dealers are using the same form of contract. It is not a private contract between two individuals; it is on a form. Now, the Secretary of Agriculture has a hearing, and he concludes that in that form of contract there are things which work material prejudice or disadvantage to sellers or buyers and which substantially affect the prices of such contracts so as to render them hazardous or unreliable. He would say to the board of trade, "We want the form of this contract changed." That would be an altogether different thing. He merely tells you to change your form of contract.

Mr. JONES. There is not any question that that would apply to existing contracts. It says, "contracts of sale to be executed." It would apply to contracts that arose after the change was made, but it would not apply to existing contracts.

Mr. GATES. I know what you mean, and I have a pretty clear idea of what I mean. We do not mean the same thing. I do not mean that if this law were to go into effect to-day it would affect the contracts that are now open, but it provides that the Secretary must determine during the month of delivery what the discounts and premiums shall be at which that grain must be delivered. That must become a part of your contract. That can not be administered until the time of delivery, can it? So there is nothing certain about that form of contract; that is, what the basis of delivery is to be and what the discounts and penalties are to be. We know the grades, the grades would have to be determined before the contract was made, but the penalties or discounts or premiums at which that grain could be delivered would be left to the Secretary.

Mr. JONES. This is a very technical discussion. I think you have exaggerated the importance of that feature of it. As I read it I think the reasonable construction of it is that if the Secretary finds there is some provision of the contract that is hazardous or unfair he would take it up with you, and you would have hearings, and he would say, "Hereafter in your contracts you ought to make some change," and then, after due notice, you would change the form of any future contracts.

Mr. GERNERD. I do not see where there would be any material difference whether your board should make that change or the change be suggested by the Secretary and made by your board.

Mr. GATES. In the final analysis the Secretary can not designate commercial discounts and premiums until the maturity of the contract. You can not know in advance the basis of your contract.

Mr. KINCHELOE. Would not that be determined by your grading?

Mr. GATES. No; it would depend entirely upon the commercial conditions at that particular time.

Mr. KINCHELOE. Well, you would have just as good a situation with the changed contract as you would with the existing contract, because both would be executed before the transaction. In other words, as Mr. Jones says, I do not think the Secretary of Agriculture has any retroactive power here; that is, he has not any right to change the form of an existing contract.

Mr. GATES. Oh, no; I think you are right about that. He can not change the conditions of a contract that is now made. This would require the board to adopt a rule that the Secretary might come in during the month of delivery and prescribe discounts or premiums.

Mr. TINCHER. This contract business is a little different from the ordinary contract that you and I might sit down and make, because the transactions on your exchange are made on a prescribed form of contract, prescribed by the exchange, which your members agree to use, under which they assume certain obligations, and the parties that trade with them assume certain agreements to arbitrate—I remember that paragraph very well, because I have had some experience with it myself. But this section here has reference to the form of the contract that the exchange is going to use, and I really think—due perhaps to the fact that you did not have time to go into it as thoroughly as you might, and especially enlightened by your first offhand version of the meaning of this paragraph—that perhaps too much importance is being attached to it.

Mr. GATES. It is all new material, and there is no room for it in a bill that seeks simply to reenact, under a different power, the provisions of the former law.

Mr. TINCHER. The occasion for it is this: That in the hearings and meetings with the exchanges the department arrived at the conclusion that there would be a possibility of an evasion and thwarting of the other law by the form of contract used, and there could be no legitimate objection to the exchange agreeing to a form of contract to be used.

Mr. GATES. It is true, of course, that we have had a very short time in which to study this bill. Nobody had a copy of it before last Saturday, so far as I know. But if there are to be any further hearings on this thing, we want to have a chance to study it further. At first blush we are seriously opposed to the new material in this bill.

Mr. KINCHELOE. As a lawyer, I do not exactly get your viewpoint. If I understand this section, it means this: In my country we have fall wheat We begin to market that along in July. Now, suppose that along in March

or now, this law is in effect, and the Secretary comes to the board of trade and looks at your form of contract for the fall wheat. He says, "Well, gentlemen, here are some things that I do not think ought to be in your form of contract." You say, "Mr. Secretary, we differ with you, and we think we can show you." He says, "All right; we will have a hearing on this." He conducts a hearing, at which you and all the experts are present, and he is still of the opinion that that contract ought to be changed. Of course, his will prevails after the hearing, and he changes that. Now, contracts are to be made for fall wheat, which will not be harvested and put on the market until about August. He comes to the conclusion that that contract is in such form that it is hazardous, and he believes that it is going to impair legitimate hedging, and he makes that change long before this wheat goes on the market. I do not see where you fellows are injured.

Mr. CLARKE. Why shouldn't he have the right, then, to keep you from selling your farm because you are selling it too cheap?

Mr. KINCHELOE. Oh, I do not think that is a parallel case. Then you speak of the uncertainty. Why should there be any more uncertainty in the amended form when the wheat comes to the market than in the form you already have?

Mr. GATES. The form we already have prescribes the discounts and premiums at which the off grades or better grades may be applied on that contract. Under this provision those things would not be known until the time for delivery came, and then the differences would be prescribed by the Secretary.

Mr. KINCHELOE. Why would they be unknown until the time of delivery came any more than under your present contracts?

Mr. GATES. Our contract specifies definitely at what discounts the off grades can be applied—so many cents off.

Mr. KINCHELOE. Is it not fair to assume that he would clarify that as much as he could?

Mr. GATES. Well, he could not do it if he is going to do it, as he said, on the basis of commercial conditions at the time the contract matures until the contract does mature. He would be fixing it from day to day during the delivery months.

Mr. KINCHELOE. I do not think he would be changing your form of contract every day or so.

Mr. GATES. Well, I am going by what Mr. Morrill said.

I just want to say one thing more about section 9. That penalty clause contains nothing in regard to the worst phase of the offense as prescribed by the legislation, but does prescribe penalties and makes it a criminal offense for a man, knowingly or carelessly, even though it be done by a clerk in his office, to send out any false, misleading, or inaccurate reports. I say the word "inaccurate" certainly ought to be changed, because you can not have a crop report that is accurate.

As to section 11 you will remember that in the old act four months was given as the time. This provides a time that, if this becomes a law, is altogether inadequate. It provides that no fine or imprisonment shall be imposed for any violation occurring before the first day of the second month following its passage.

As I understand it, there are two bills before this committee, this bill and the one that is numbered just before it, 11842. And I just want to say this, that if you ask us which death we would rather die, we would rather take the more merciful and quicker method than that which this bill prescribes, because either bill will mean death to the exchanges within a few years, and I judge simply from the experience we have had since the Government began hampering with this thing. The agitation there has already been, has so reduced the volume of speculative business as to make the markets unsatisfactory at present.

Mr. KINCHELOE. Do you think this bill is more radical than the original act?

Mr. GATES. Very much more.

Mr. TINCHER. What you mean is that you would rather we would pass the Gensman bill and put you out of business entirely?

Mr. GATES. Yes. Then you would know where you were at. I think a quick death is always preferable.

Mr. TINCHER. What you mean is that you know Congress hesitates to close the grain exchanges, and you know there is no danger in the world of our accepting that challenge to pass the Gensman bill?

Mr. GATES. I do not know what the committee may do as to that. The language of the bill is entirely similar, with certain exceptions. One cuts it off altogether, and the other permits it to go on under Government control.

Now, the grain trade has for a year and a half been willing to cooperate with the committees of Congress to get a Federal bill that will contain reasonable supervision, but that has seemed to be an excuse for going away beyond reasonable supervision, and saying that if the fellows will not stand for reasonable supervision we will put something additional into it that will make it "control." That is the tendency in this bill, possibly more than in the bill which was not sustained by the court.

Mr. KINCHELOE. I think you misconstrue the attitude of the committee. The only point with me is to regulate your exchanges so that the grower of grain will have ample protection. At the same time I do not want to destroy legitimate business.

Mr. TINCHER. I want to say, as one member of the committee, having the highest personal regard for the gentlemen who appear here and testify, that you have more uncertainty about what Congress is going to do to the exchanges than I have about what the exchanges are liable to do to the country. I think this is a subject on which Congress certainly should legislate, and I can not accept as anything but bluff your proposition that you would rather have us pass a bill to close the exchanges than to pass a bill to regulate them.

Mr. GATES. It is not bluff, Mr. Tincher. It has been seriously considered by the grain exchanges themselves whether it would not be well to close for a period, so that the country might see what the effect would be of that program.

Mr. TINCHER. You mean that you actually contemplated closing the exchanges to show what you could do to the country, so that, possibly, they would let you alone?

Mr. GATES. No; you are mistaken in that.

Mr. CLARKE. You are misconstruing his statement.

Mr. TINCHER. This is a pretty serious matter. It is a pretty serious matter to the producers of grain. It is a pretty serious matter to everyone.

Mr. GATES. It is. I think it is a more serious matter than you yourselves realize, and there is no one going to be hurt so much by a throwing of the machinery out of gear as the producer himself. There has not been anybody hurt so much so far as the producer.

Mr. TINCHER. You stated this morning that no one had yet admitted a public interest being in this grain-exchange business. I call your attention to the fact that Herbert Hoover, Julius Barnes, yourself, and everybody that has ever appeared before this committee prior to this morning has admitted that the grain markets of this country do have a public interest, that they are mammoth affairs, and must be dealt with from the standpoint of the public having a general interest in the grain market. Now, you come in this morning and prescribe a substitute for Federal legislation, some action by a committee—yourself and Mr. Gustafson and Clifford Thorne—and you say, and I think you are serious, that you would work the problem out better if Congress would just lay off and let you do it.

Mr. GATES. I said that in relation to paragraph (e) of section 3. I think it will get further in adjusting the differences between the producer and the exchanges than you will get through legislation.

Mr. TINCHER. Now, Mr. Gustafson—he is at the head of what is called the Grain Growers' Association?

Mr. GATES. Yes, sir.

Mr. TINCHER. That is an organization by which they are attempting to market their grain by cooperation. That has not proven very successful so far, has it?

Mr. GATES. I have not heard that they are marketing very much grain. I think there is some question as to when they will be in a position to market grain, and so far as I can learn they have not proceeded far enough with their plans to be in a position to market yet.

Mr. TINCHER. My theory about this bill is that if there is manipulation of prices on the Chicago Board of Trade, or any other board of trade, it ought to be stopped, and if there is manipulation that ought to be stopped this regulation will not hurt the exchanges. And I have a further theory that there are sufficient legal, bona fide transactions going on and the business is in such volume and of such importance and of such public interest that there is a legitimate end to it which will not be destroyed by legitimate regulation or legitimate supervision. Supervision will not destroy any legitimate business in this country.

Mr. GATES. I am not talking about supervision. I have tried to work out something on supervision. I have tried to get together with you on the matter

of supervision, but there always is the attempt to go further toward control, not to stop at supervision.

Mr. CLARKE. Was it not in your testimony here that you and the Secretary of Agriculture had agreed as to certain regulations, and then the bill went through the Senate, and then in the conference they slipped in that paragraph there that goes further than even the Secretary thought it was necessary to go? Was not that your testimony?

Mr. GATES. Yes; there were several changes made.

Mr. TINCHER. Do you mean to answer that question yes, that the conference slipped something into this bill that the Secretary of Agriculture was not for?

Mr. CLARKE. Why, there is no question about it.

Mr. TINCHER. I say there is; I happened to be on that conference.

Mr. CLARKE. Was not that paragraph put in there?

Mr. TINCHER. Anyone that has ever served on a conference committee knows that that would not be done.

Mr. CLARKE. Well, anybody that has ever served here knows that time and time again there have been things put in in conference that were not agreed on.

Mr. TINCHER. I will say, in justice to the Secretary, that I am thoroughly familiar with his attitude on that paragraph of the bill concerning which the gentleman testified, and while there may be some doubt about what the gentleman understood the Secretary to be for, I had my understanding as to what the Secretary was for when we agreed to strike out the Senate amendment and take the House bill as it passed. As I recall, the Senate receded on the amendment, so it was not putting in a paragraph.

Mr. GATES. I am not talking about slipping over anything——

Mr. TINCHER. Well, but you answered the question yes. I will tell you what that paragraph was. The proviso in that paragraph as finally worded was worded by Mr. McLaughlin of Michigan by an amendment on the floor of the House. The Senate conferees agreed to recede from their amendment, and the way that paragraph finally went into the bill it was worded by Mr. McLaughlin of Michigan.

Mr. CLARKE. You admit right here in your statement that there was something added in conference.

Mr. TINCHER. Not a word added in conference.

Mr. CLARKE. That is your statement.

Mr. TINCHER. It went into the bill exactly as it passed on the floor of the House.

Mr. KINCHELOE. Mr. Gates, let me ask you this: I have great confidence in your ability and technical knowledge of the grain exchanges; so I am going to remember the prophecy that you made a while ago, and see how it works out. You say this is going to put the grain exchanges out of business, and you are so confident of that fact that you prefer the Gensman bill to this. You do not want slow strangulation, but sudden death.

Now, if this bill passes as it is and becomes a law, and the Secretary administers it fairly and impartially, having in view the legitimacy of your business and at the same time the interests of the grain growers of the country, and he administers it fairly, as we have a right to assume he will do, it is still your opinion that the grain exchanges will be out of business in a few years? Is that true?

Mr. GATES. I think it will so hamper the machinery as to make it inadequate for the purposes that it has served for the last 30 years.

Mr. KINCHELOE. And you have in view that the Secretary is going to administer this fairly and impartially?

Mr. GATES. Yes, sir. All during the past two years while you have been agitating this there has not been enough speculative support for the market to pay for the cost of the service. I am in the business and I know.

Mr. VOIGT. Do you mean by that to say that the amount of speculation in grain has fallen off during the last year or two?

Mr. GATES. Yes, sir; very materially. The outside trading by the general public, which comes in the way of a supporting market, which is very largely the other side of your selling hedge, has been so inadequate as to make an unsatisfactory market during the past two years.

Mr. CLARKE. Mr. Gates, will you furnish us with a record of those transactions, showing that?

Mr. GATES. May I say this: A man is not compelled to trade; it is purely a voluntary thing. Now if you tell him that every transaction he is going to

make is going to be reported to the Secretary of Agriculture there are a great many people that are not going to trade.

Mr. KINCHELOE. Do you not think you would be exaggerating if you told that fellow that every transaction was going to be reported to the Secretary? Would it not be better to say that every transaction may be reported to the Secretary?

Mr. GATES. Well, one has the same effect as the other.

Mr. KINCHELOE. I do not believe that the Secretary of Agriculture in administering this law is going to demand any report from any grain exchange in the country unless he thinks there is something wrong. Why should he continually want reports from you fellows with no object in view?

Mr. GATES. The statement was made when the other bill was under consideration that they wanted it as a means of gathering information. Fragmentary information, gathered one day here and one day there, would not be satisfactory. You would have to have the information continuously if it were going to be of value in drawing conclusions.

Mr. KINCHELOE. Do you not think that the Secretary would not want to harass the business of the Nation unless he was of the opinion, unadvised at least, that there was something wrong with the transaction?

Mr. GATES. No; I do not think that. We had some experience with this matter of getting daily reports during the war. Unless you had those reports you could not tell what was going on from day to day.

Mr. KINCHELOE. But during the war those continuous reports were to enable the Government to keep up the supply of grain in this country.

Mr. GATES. No, indeed; the Government did not ever see the reports.

Mr. JONES. Mr. Gates, you made the statement a while ago that the grain exchanges had seriously considered outright closing, and then you significantly added "for a time"——

Mr. GATES. I did not mean officially.

Mr. JONES. Well, officially or unofficially, it is important. Then you added "for a time." You recognize that if they were to close the worst period would be immediately after they are closed, before other machinery were devised for handling the distribution of grain, do you not?

Mr. GATES. Yes.

Mr. JONES. So that when you added "for a time" you meant you would close just for the purpose of throwing the thing into confusion, and you realized that the worst confusion that could possibly result would be the confusion that immediately followed the closing?

Mr. GATES. Why, I am not advocating that, you understand.

Mr. JONES. But you said you seriously considered doing that?

Mr. GATES. Yes; it was seriously considered.

Mr. JONES. Now, what would be your purpose in closing just for a time?

Mr. GATES. It would be to get away from this continual annoyance of having to come to Washington to discuss legislation that was more or less intelligent in regard to the grain business.

Mr. JONES. You hoped that there would be unusual confusion immediately following the closing——

Mr. GATES. There was not any hope about it at all, Mr. Jones.

Mr. JONES. You never seriously considered closing permanently, did you?

Mr. GATES. Closing the board; whether it was ever opened again would be another question.

Mr. CLARKE. Mr. Gates, would you furnish, to put into the record, the transactions of the last two years in comparison with other years?

Mr. GATES. No; I would not. As a matter of fact, you can not get them.

Mr. VOIGHT. You say you think this agitation for this sort of legislation has caused a falling off in speculative business?

Mr. GATES. I do not think there is any doubt about it.

Mr. VOIGT. But do you not think that some of it might be traced to other causes?

Mr. GATES. There may be contributing causes.

Mr. VOIGT. Well, there has been a general depression in business in this country during the past two years, and business men generally have not transacted as much business as they did before. Do you not think that that same condition would apply to the grain exchanges?

Mr. GATES. No. I will tell you why. It is our experience that when general business is good our trade, the general speculative trade, is lighter, because people are busy with their own business; and when business is depressed in other

lines there is usually a larger volume of speculative business, because the people are trying to supplement their inadequate income with a little speculative profit.

Mr. VOIGT. And that, translated into other language, means that when people are not doing a satisfactory business in their own line they go out and do a little gambling?

Mr. GATES. You might so interpret it. I would not put it that way.

Mr. VOIGT. I want to ask you another question. It was reported generally in the newspapers of this country immediately after this law was declared unconstitutional by the Supreme Court that wheat had, I believe, gone up 4 cents a bushel, and the news items attributed the rise in the price of wheat to the fact that this legislation had been gotten out of the way by the Supreme Court decision. Do you believe that is true?

Mr. GATES. No; I do not think that had anything to do with it. I do not think you can hold the grain trade responsible for what the newspapers print, even about this bill. I do not think that is a fact.

Mr. VOIGT. Do you not think the thought was inspired?

Mr. GATES. No; I do not think so at all. I did not hear any talk of that kind around the exchange.

Mr. TINCHER. Mr. Chairman, I move that we adjourn until to-morrow morning at 10 o'clock, and close the hearings in opposition to the bill to-morrow.

(The motion, being duly seconded, was put and carried.)

(Whereupon, at 12.30 o'clock p. m. the committee adjourned to meet at 10 o'clock a. m. to-morrow, Friday, June 9, 1922.)

COMMITTEE ON AGRICULTURE,
HOUSE OF REPRESENTAIVES,
Friday, June 9, 1922.

The committee met at 10 o'clock a. m., Hon. Gilbert N. Haugen (chairman) presiding.

There were present: Mr. Haugen, Mr. McLaughlin of Michigan, Mr. Purnell, Mr. Voigt, Mr. McLaughlin of Nebraska, Mr. Riddick, Mr. Tincher, Mr. Williams, Mr. Hays, Mr. Thompson, Mr. Gernerd, Mr. Clague, Mr. Clarke, Mr. Rainey, Mr. Aswell, Mr. Kincheloe, and Mr. Jones.

ADDITIONAL STATEMENT OF HON. WALTER H. NEWTON, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF MINNESOTA.

Mr. NEWTON. Mr. Chairman, I would like to make a request of the committee. Since I appeared before the committee yesterday morning it has come to my attention that of the Minnesota commissioners, three in number, all but one have been out of the city, and among them is Mr. O. P. B. Jacobson, who is in charge of the grain and warehouse division of the commission. Mr. Jacobson has been up in northern Minnesota, and his first knowledge of this matter was yesterday when he returned to St. Paul. He is of the opinion that the bill as it is drawn, and based upon the commerce clause, will absolutely do away with the very elaborate machinery that the State of Minnesota has enacted and put into effect for the handling of this matter and the regulating of the exchanges. Their last bit of legislation was passed at the legislative session of one or two years ago, I do not recall which, but I have a copy of the law here.

Mr. KINCHELOE. Does he mean the way the bill is drawn or that it can not be drawn in any way to meet the situation?

Mr. NEWTON. That I do not know. I know the objection is to the bill as it is drawn. I had the impression that he might be against the whole bill, but it is difficult to tell. He has requested the general solicitor of the associated railway and warehouse commissioners here in the city to appear against it, but Mr. Benton, of course, has no technical knowledge at all of this matter of trading in grain futures.

Mr. VOIGT. Mr. Newton, have you read the decision of the Supreme Court in the Dakota Grain case?

Mr. NEWTON. The Lempke case?

Mr. VOIGT. Yes.

Mr. NEWTON. No; I have not.

Mr. VOIGT. If you will read that case, you will probably come to the conclusion that no State legislation can be valid in the face of this legislation.

Mr. NEWTON. That certainly is true as to the transactions involved in the Lempke case. It is a question, of course, of whether trading in futures is a question of commerce such as was involved in the Lempke case, but the request I wanted to make of the committee, in order to make it possible for Mr. Jacobson to appear here, if he can come, is to request that he be heard Monday, if he can get here on Monday. Of course, he would have to leave Minneapolis to-night. That would get him here Sunday, so that Monday would be the earliest he could possibly appear here.

Mr. CLAGUE. Has he telegraphed you that he wants to come?

Mr. NEWTON. No; he simply telegraphed Mr. Benton that he wanted him to be heard, and I have heard from the governor's office on it.

Mr. ASWELL. It would be safer to agree to hear him Tuesday, would it not?

Mr. NEWTON. I think he could get here Monday. I do not see why he could not. He can leave Saturday night and get here Monday. I suppose all the members of the committee want to dispose of this matter just as quickly as it can be disposed of, and I have not any desire to not cooperate with them to that end.

Mr. KINCHELOE. What position do you say he holds?

Mr. NEWTON. He holds that the law as now drawn——

Mr. KINCHELOE (interposing). I mean what official position does he hold?

Mr. NEWTON. He is the commissioner in charge of grain matters. We have a commission of three members.

Mr. KINCHELOE. Is he a State officer or commissioner?

Mr. NEWTON. He is a State officer.

The CHAIRMAN. Mr. Jacobson has appeared before this committee several times before. I presume he is one of the best informed men in the country on the matter of inspection and weighing service in reference to grain grading. The question is whether the committee wants to extend the time for hearing.

Mr. RAINEY. I move that if he wants to come here to be heard and can come here Monday or Tuesday, that he be heard at that time by the committee.

Mr. ASWELL. I second the motion.

Mr. TINCHER. Let us see if this suggestion will not work out all right. I want to please everybody we can, but still I want to close these hearings. If Mr. Jacobson comes here Monday and proposes that the committee amend this bill, I would be perfectly willing to invite him before the committee, but at this time to adopt a motion providing for hearings as late as Monday or Tuesday will probably defeat our purpose of getting a day on this bill in the House next week. We have had Mr. Jacobson before the committee and we have a copy of the Minnesota law and have heard several witnesses from the State of Minnesota in reference to that law. So far as I am personally concerned, I think my views on your State laws have been expressed in the hearings as well as the views of a number of others, but if Mr. Jacobson gets here on Monday I would be in favor of calling him before the committee on the subject of a committee amendment to the bill, but not to open up the hearings now and continue them until Tuesday, which would mean that we would not get this bill up for consideration next week at all, and I would be dead against that.

Mr. CLAGUE. Our day is Thursday, is it not?

Mr. TINCHER. Yes; but if we do not close the hearings this week and begin to consider committee amendments, we will not get through by Thursday; but I want to treat Mr. Jacobson perfectly fairly and would be in favor of hearing him in reference to any amendment.

Mr. NEWTON. He may have objections to the bill that he does not feel can be corrected by an amendment, in which event I would not want him to be foreclosed from appearing here.

Mr. TINCHER. I do not want to foreclose him, but I do not propose now, unless you do it over my protest, to have a motion adopted to continue these hearings until next Tuesday or Monday.

Mr. RAINEY. Without any motion at all, let us have an understanding that if he comes here Monday or Tuesday we will hear him.

Mr. TINCHER. That we will hear him either on a committee amendment or in opposition to the bill, if he wants to be heard.

Mr. KINCHELOE. I think in view of the fact that this is a new procedure——

Mr. CLARKE. Who is the gentleman you are referring to?

Mr. NEWTON. Mr. O. P. B. Jacobson. He is one of the three railway and warehouse officials of the State of Minnesota, and is in direct charge of the division pertaining to grain, so he is an expert on that proposition.

Mr. ASWELL. I think in view of this position and necessarily his interest in this matter, that the motion should carry, and we should give him a hearing in the regular order next Monday.

Mr. NEWTON. We have a very elaborate machinery and an extensive law, and the State commission are of the opinion that this proposed bill will just simply wipe them out. Now, it is a legislative act they are called upon to administer, and they feel they owe an obligation to the people of the State to come down here and present their views. They have been away, and Mr. Jacobson just arrived back in St. Paul from up in the northern part of the State, where he has been on grain-inspection work, and so on, so that this is the first knowledge he has had of the detailed provisions of the proposed act.

Mr. JONES. Did he specify any particular portion of the bill that he thought was especially objectionable?

Mr. NEWTON. No.

Mr. JONES. Did he mention any part of the bill?

Mr. NEWTON. No; but preceding that, we heard from other members; that is, employees of the commission who were there in St. Paul, which I set forth yesterday.

Mr. TINCHER. I think Mr. Rainey's suggestion is a good one, and there is no question if he comes here Monday or Tuesday but what we will hear him, but I do not want to prevent the committee from going ahead and considering the bill in the meantime. That is the proposition involved. These gentlemen are going to close this morning, and I think the committee ought to go ahead and consider the bill, but not close up or preclude him from being heard if he comes here on Monday.

Mr. NEWTON. I do not want, of course, the members of the committee to foreclose their minds on what he has to say, neither do I have any desire to unduly delay your actions in the matter.

Mr. KINCHELOE. In view of the fact that this bill is a new departure, I would like to have whatever information this gentleman has in regard to the matter.

Mr. CLAGUE. Mr. Jacobson is the best posted man in the Northwest on grain and grain futures, and I think that is conceded by all.

Mr. KINCHELOE. Can he get here Monday?

Mr. NEWTON. Yes; I should, of course, telegraph him to come here on Monday.

Mr. MCLAUGHLIN of Michigan. Mr. Jacobson has been before the committee several times and as Mr. Clague has said, he is one of the best-posted men in the country on these matters, and if it is at all convenient I think he ought to be heard. Of course, I would not like to do anything that would be discourteous to him or foreclose us from getting the opinion of a man like Mr. Jacobson.

Mr. ASWELL. You do not want to go ahead and consider the bill before he gets here, do you?

Mr. MCLAUGHLIN of Michigan. I would not like to foreclose him by any definite action. If he is coming here at all it would not be courteous for him to come here and find everything closed against him. I would like to have the committee accommodate itself to Mr. Tincher's suggestion, but he suggests that we let Mr. Jacobson come here only to be heard on an amendment. It is difficult for us to tell now what we shall let Mr. Jacobson say, because we can not, of course, indicate to him what he is going to say.

Mr. TINCHER. No; and I never have had any notion of that kind. You know just as well as I do that if we adopt a motion setting hearings for some time next week what the effect will be. Mr. Newton said he could be here Monday, if at all. It is now suggested that somebody make a motion that we hear him Tuesday. If we are going to get this matter up next Thursday we will have to begin considering the bill at once, and, of course, everybody knows that if we do not pass this bill before the recess of the House it will not be passed so as to affect this year's wheat crop at all.

Mr. KINCHELOE. I think we ought to accommodate the gentleman and hear him on Monday, because if he can get here at all he can get here at that time.

Mr. NEWTON. I can not conceive of his not coming immediately, just as soon as he receives my wire, which means that he would be here in time to be heard on Monday.

Mr. MCLAUGHLIN of Michigan. You can wire him to come here as soon as he can and then we can hear him on Monday.

Mr. RAINEY. I submit the motion then that we hear the gentleman from Minnesota on Monday.

The CHAIRMAN. Mr. Rainey, do you couple with that a motion that the hearingse be closed definitely on Monday?

Mr. RAINEY. No; I would not, because I do not want to preclude anyone from having a chance to be heard, who can give information on the matter.

Mr. TINCHER. Then I move to amend the motion by moving that the hearings be closed on Monday. I do not want to preclude the Congress from having a chance to consider this bill at this session.

Mr. MCLAUGHLIN of Michigan. Are you going to do that in face of the fact that you do not know what Mr. Jacobson is going to say on Monday, and he is one of the most interested men in this matter in the country.

Mr. TINCHER. No; but if we postpone the hearings, somebody will be here Monday and want the committee to hear somebody else the following week.

The CHAIRMAN. It ought to be definitely known just what the committee is going to do, and everybody should be given an opportunity to be heard. So far, there have been no requests of this sort, but Mr. Jacobson represents a big and important State and is entitled to be heard.

Mr. ASWELL. Suppose Mr. Jacobson comes here Monday and opposes the bill and then it becomes necessary for somebody to appear in favor of the bill. I think it would be unwise to shut out anybody from being heard in this way.

Mr. TINCHER. We could have another motion made at that time. If it is the understanding that we are going to close the hearings Monday, they will all be here, and if it is the understanding we are going to kill this bill from time to time by continuing it over another week. that is another thing.

Mr. MCLAUGHLIN of Michigan. I think everybody knows that it is the feeling of the committee that they want to close these hearings as soon as possible, but without knowing what Mr. Jacobson is going to say, the committee itself may want to hear some one besides Mr. Jacobson.

The CHAIRMAN. You have heard the question.

Mr. PURNELL. What is the question?

The CHAIRMAN. State your amendment, Mr. Tincher.

Mr. TINCHER. That we hear Mr. Jacobson Monday and that we close the hearings on Monday.

Mr. ASWELL. The motion is to hear Mr. Jacobson and Mr. Tincher's amendment and to close the hearings Monday.

The CHAIRMAN. The amendment of Mr. Tincher comes up first, to close the hearings on Monday. All those who are in favor of the motion say aye and those opposed, no. The noes have it.

Mr. TINCHER. I will ask a roll call on that.

Mr. KINCHELOE. I am like Mr. McLaughlin, and I do not think there is any doubt but what we will close the hearings on Monday, and I want the bill to be passed on as soon as possible, but I am frank to say that so far as I am concerned, I am seeking all the light I can get in view of the fact that this is a new departure.

Mr. TINCHER. And I want to know whether we are going to get the bill out or not.

Mr. VOIGT. If the committee should decide Monday that further time is necessary, we could take that matter up then.

Mr. TINCHER. But if we do not have an understanding that we are going to close the hearings, we will not get the bill out.

Mr. RIDDICK. I think we all want to close the hearings on Monday unless something should develop that would make it inadvisable to do that.

Mr. TINCHER. Yesterday, with all the grain trade here, we asked them how much time they needed and they said they could close to-day. I am perfectly willing to be fair in this matter, but I do not want to have the legislation cut off.

(A roll call having been ordered, the clerk announced there were 8 ayes and 6 noes, so the amendment was carried.)

The CHAIRMAN. The question is on the motion as amended.

(The question having been put, the chairman announced that the motion as amended was adopted.)

The CHAIRMAN. Who is the next witness?

STATEMENT OF MR. FREDERICK B. WELLS, VICE PRESIDENT OF F. H. PEAVEY & CO., MINNEAPOLIS, MINN.

Mr. WELLS. Mr. Chairman and gentlemen, of necessity I will have to cover more or less of the ground covered by Mr. Gates yesterday, but I think that

possibly my viewpoint may in some respects differ from his in that I and, in fact, all the outside markets which in company with Mr. Gates I represent have slightly different interests in certain lines from the great central market of Chicago. In other words, our chief interest is in the use of the markets from the standpoint of cash grain handlers.

I will confess that when I listened to the statement of Mr. Morrill, Solicitor for the Department of Agriculture, on the first day of the hearings I was left with the impression that this committee was possibly more interested in putting out a bill which might be declared constitutional by the courts than in developing a bill which would accomplish the results which they desired without inflicting a hardship upon the marketing system of the country, and I will have to confess that that impression has not as yet been entirely dispelled. I am not going to attempt to argue the legal phases of the bill, but from a layman's point of view there are certain portions of Mr. Morrill's testimony upon which I would like to comment, because they seem to be of vital import from a grain man's standpoint as well as from that of a lawyer.

Great stress was laid upon the decision in the Packers and Stockyards case, and I would like to read Mr. Morrill's final statement in regard to that decision. He says:

"In the packers and stockyards decision—and in referring to the packers and stockyards decision I do not mean to imply that the proposed regulation of the future exchanges is strictly comparable with the Packers and Stockyards case, because there is quite a fundamental and essential difference between the two, still there are certain statements made in the packers and stockyards decision that have a bearing upon the matter before you."

Now, I would like to point out very briefly the fundamental and essential differences to which Mr. Morrill refers.

You are all familiar with the packers and stockyards decision, and even a layman, I think, can pick out certain very clear distinctions between the matter covered by that decision and the subject now before you for consideration. In the first place the object of the bill. The object to be secured by the act was the free and unburdened flow of live stock from the ranges and farms of the West and Southwest through the great stockyards, etc. Now, the object of the bill before you for consideration is not to secure the free and unburdened flow of grain from the farms of the West and Southwest to the consuming and distributing centers. The object is to control a method of doing business which has been declared intrastate and which, if it has any connection at all with interstate commerce, is decidedly indirect and purely incidental.

Mr. TINCHER. Mr. Wells, I can not see where you see any difference at all between the two propositions. There was not any complaint in the stockyards legislation that they were mistreating the stock or not feeding the stock or anything like that, but it was purely a matter of handling that property, which certainly can not be any more of a public necessity than handling the grain in such a way that the producer and consumer have fair treatment in commerce.

Mr. WELLS. May I just go on, Mr. Tincher, and develop the thought which I have in mind, if it is worthy of consideration?

Now, the reasons for the stock yards act were as follows:

"The chief evil feared is the monopoly of the packers enabling them unduly and arbitrarily to lower prices to the shipper who sells"—

There is no claim made in the record so far as I can find that future trading unduly and arbitrarily lowers prices to the shipper or that it produces a monopoly.

Mr. TINCHER. The entire claim made is that the manipulation of future trading lowers the price to the producer and does not help the price to the consumer, and the two things are absolutely on all fours, and that has been the case throughout the record. I do not think any witness who has testified for the leg slation——

Mr. WELLS (interposing). That is your individual view of what is shown in the record, but I can not find that it is in the record as coming from people competent to make such statements. There were a number of people who spoke before this committee, whose statements were based upon prejudice rather than upon experience.

Mr. TINCHER. Well, I will give you a citation so that you may look this up in the record: Hoover, Julius Barnes, and the gentleman who appeared here yesterday, Mr. Gates, Mr. Wells, and all of them admitted that manipulation was possible, some said it was hardly probable, but all admitted that it had happened in the past and all admitted that under the present system it was

possible for it to happen again, and I will give you a specific instance. Mr. Barnes, who knew as much about it as anyone, admitted the manipulation practiced by the English when they came over here to purchase wheat, when they bore down the price of wheat and then purchased the wheat from the producer at a less price than the former market price.

Mr. WELLS. Those are abnormal and unusual happenings and no part of the constant practice. May I continue with my comments on the reasons for this act——

Mr. TINCHER. Yes; but I thought we could get along better if we had both of our views expressed.

Mr. WELLS. Yes.

"Another evil which it sought to provide against by the act was exorbitant charges, duplications of commissions, deceptive practices in respect of prices, in the passage of the live stock through the stockyards."

There are no such charges as regards the handling of grain made in the record so far as I can find.

Another reason for the act or justification was "expenses incurred in the passage through the stockyards necessarily reduce the price received by the shipper."

I think the testimony before this committee in the hearings on H. R. 5676 and before that on H. R. 2363 show that the margin exacted on grain from the producer to the ultimate consumer was smaller than on any other commodity handled anywhere else in the world.

Mr. TINCHER. But they also showed, without any contradiction, that every bushel of grain was dealt in as many as 40 or 50 times.

Mr. WELLS. And referring again to Mr. Hoover, Mr. Hoover said it did not make any difference if it was 100 times, that that loss fell not on the producer but on the insurer or the underwriter who carried the risk. Now, here, it seems to me, is the great difference. In justifying Federal restraint, this statement is made:

"Whatever amounts to more or less constant practice and threatens to obstruct or unduly to burden the freedom of interstate commerce is within the regulatory power of Congress under the commerce clause, and it is primarily for Congress to consider and decide the fact of the danger and meet it."

Now, the practices which were to be regulated under the packers and stockyards act were, apparently, according to this statement, more or less constant practices.

Granting, for the sake of argument, that manipulation has at times taken place in the grain market, it has been the abnormal, it has been the unusual, and it has not been more or less constant. It could not have been more or less constant because had that happened, the whole hedging system would have broken down, and I would like to call your attention that I am interested in the use of the futures market as a hedger, a handler of cash grain. Manipulations I deprecate as much as any one deprecates it, but I do say that it is the unusual thing and is not the constant thing. It is the thing which happens under abnormal conditions. It is a thing which is made possible only by abnormal conditions and in the absence of abnormal conditions manipulation can not and does not take place.

Mr. TINCHER. Would it be your theory, since you are addressing yourself to a legal proposition, that the courts would say they could only regulate such manipulation where it was a normal condition and not where it was a possible condition brought about by abnormal times?

Mr. WELLS. They state "more or less constant practice."

Mr. TINCHER. Do you think they meant to confine themselves to constant practices?

Mr. WELLS. I do not know. I am simply giving a grain man's view of wherein the conditions surrounding this decision differ from the conditions which would exist in the enactment of a statute such as you propose; that is all.

Now, I want to call your attention to one thing which possibly has been brought to your attention before, but I think it is overlooked very often and that is, it is quite different thing to regulate future trading and to regulate a business like the handling of live stock. Future trading to be of any benefit and have any economic value requires a volume of trade. It requires the presence in the market of individuals, traders, other than those who are directly and constantly engaged in the handling of grain. Unwittingly, very likely, but

actually those traders take the part of underwriters. They underwrite the risk of fluctuation in price. There is nothing to compel them to come into the market. There is nothing to keep them in the market unless they think there is an opportunity for them to make a profit. The moment you surround a market with arbitrary rules and regulations, the moment you create any uncertainty as to the validity of a contract or as to whether the terms of a contract could in any way be changed, that moment you drive this trader—call him speculator, call him gambler, if you will, but in actual fact, he is an underwriter of the risk—you drive him from the market. When you drive him from the market your whole insurance fabric is gone. Now, it does not take very much to accomplish that.

We have seen in Minnesota in the last year and a half a situation develop which renders our Minneapolis market and the Duluth market of relatively little value to the hedger as compared to the markets which were in existence prior to Government administration during the war.

Almost immediately after the termination of Government control, when our markets were opened there began agitation for the elimination of future trading or restrictions around future trading, the doing away with short selling and all sorts of restraints upon the futures markets. Coincident with that agitation, which started out in our part of the country as State agitation and rapidly became Federal or national, came a falling off in the volume of trade until to-day there is traded in the Minneapolis market less than one-third of the pre-war volume. There has been no such falling off in the crops. There has been no such falling off in the milling activities. There has been no such falling off in the elevator activities, but the fact remains that the volume of future trading in the Minneapolis and Duluth markets—and the same thing is true in Kansas City—has fallen off to such an extent that those markets at times are very unsatisfactory from a hedger's point of view. I am talking purely as a hedger.

Mr. CLARKE. Is your conclusion from that the same as Mr. Gates's, that when business conditions generally are at a lower ebb, your trades in grain futures and the rest of it increase proportionately?

Mr. WELLS. I could make no statement as to that, Mr. Clarke, because I am not engaged in handling futures for anybody else. I simply use them as insurance against cash grain.

Mr. KINCHELOE. Do you think the falling off in volume and in activity has affected the price to the grower any?

Mr. WELLS. I do not think there is any question about it.

Mr. ASWELL. In what way has it affected the price to the grower?

Mr. WELLS. It has affected the price because at times when a man wishes to hedge now there is an absence of buyers, and the market sags and sags until it reaches a level where some trader is willing to make a purchase. In other words, you can not execute a trade to-day in the Minneapolis market—an offer to sell 10,000 bushels of wheat, for instance, within a range of a quarter of a cent, and that was common before the war.

Mr. ASWELL. What has caused this falling off—the agitation?

Mr. WELLS. The falling off came as a result of this constant agitation against future trading and the fact and belief among uninformed people that future trading was under such restraint that you could never tell whether you would be allowed to complete your contract or whether it would be closed out at any time, prejudicial to your interest.

Mr. KINCHELOE. When did the legislature of Minnesota pass the first act undertaking to regulate trading in grain?

Mr. WELLS. In February, 1921. The markets were reopened, I think, in July, 1920, and it was during the following winter. The agitation began in the Fall, immediately following the opening of the market.

Mr. ASWELL. Was that agitation by the grain producers?

Mr. WELLS. The agitation was largely political. The agitation originated, I think, with some of the radical farm organizations.

Mr. PURNELL. What effect did declaring section 4 of this act to be unconstitutional have on the market?

Mr. WELLS. It had no effect, in my judgment.

Mr. PURNELL. There was no natural or artificial result coming from it?

Mr. WELLS. I do not think there was any whatsoever. I know so far as the men with whom I am brought in contact are concerned, the tendency was to be rather despondent because we felt that something worse would probably be evolved, and we were not disappointed.

Mr. JONES. Then why did you attack the act?

Mr. WELLS. We did not attack it.

Mr. JONES. Who was responsible for the attack?

Mr. WELLS. A group of members of one exchange attacked it as affecting their property rights.

Mr. JONES. What exchange was that?

Mr. WELLS. The Chicago exchange, and of course it was natural it should be that exchange because they have by far the largest business.

Mr. JONES. They have the biggest wheat market in this country?

Mr. WELLS. They have the biggest futures market in the world.

Mr. ASWELL. Did your board of trade join them in that suit?

Mr. WELLS. Our board of trade and every other board of trade refused and every contract market refused. Furthermore, we came down here and in collaboration with the Solicitor of the Department of Agriculture we agreed upon the rules and regulations which would be necessary in order to become contract markets.

Mr. RAINEY. And the Chicago Board of Trade did not join in that suit.

Mr. WELLS. No, sir.

Mr. KINCHELOE. A member of the Chicago Board of Trade brought the suit, a man by the name of Hill, and employed the attorney for the Chicago Board of Trade to bring the suit.

Mr. WELLS. That is very true, but he was not acting for the Chicago Board of Trade. Hill's position was exactly the same as that of a minority stockholder.

Mr. RAINEY. I presume that was because the attorney for the Chicago Board of Trade necessarily knew all the ins and outs of the matter.

Mr. TINCHER. I really think the Chicago Board of Trade wants the legislation judging from what Mr. Gates said yesterday.

Mr. MCLAUGHLIN of Michigan. I do not remember definitely about it just now, but my impression is that it appears from the record that the board of trade as an entity was asked to begin the suit and refused.

Mr. WELLS. They did.

Mr. TINCHER. And they were made defendants.

Mr. MCLAUGHLIN of Michigan. And the individual members went ahead and the court said that they had a right to come in.

Mr. WELLS. That was the situation exactly, Mr. McLaughlin.

Mr. CLAGUE. Was the attorney for the board of trade removed? I was told that the attorney for the board of trade was removed.

Mr. WELLS. No; I do not think he was removed, but he did not function for the board of trade in the litigation in question.

Mr. KINCHELOE. There were eight members of the board of trade that brought this suit and they invited others that wanted to do so to come in.

Mr. RAINEY. Mr. Wells, in your business, do you come in contact with many of the producers.

Mr. WELLS. I come in contact with a great many of the producers.

Mr. RAINEY. Do you find any considerable agitation for the passage of such a bill as we have before us among the producers?

Mr. WELLS. I have found no agitation for such a bill among those who knew anything about the marketing system. I can say furthermore that in contact and frequent contact, with members of the Farm Bureau Federation I find no inclination on their part to do anything to break down the present marketing system.

Mr. ASWELL. Was there anybody running for office out there on this issue?

Mr. WELLS. No; I think not.

Mr. KINCHELOE. There is agitation among the farm organizations, including the Farm Bureau, that they be permitted to become members of the board of trade and at the same time prorate their earnings, is there not?

Mr. WELLS. There is among some farmers' organizations, and I will come to that, if I may, in my consideration of the bill.

The CHAIRMAN. Do we understand you to say that the farmers' bureaus are opposed to this bill?

Mr. WELLS. No; I did not say that. I said they were opposed to anything that would break down the existing marketing machinery.

The CHAIRMAN. That is indefinite. Just what are they for?

Mr. WELLS. I think they are for reasonable supervision which will put the Department of Agriculture in possession of the necessary information upon which to base recommendations for legislation in the future should that prove necessary.

The CHAIRMAN. Are we to understand that they are opposed, then, to regulation?

Mr. WELLS. I can not say how they stand officially on that.

Mr. TINCHER. I think it is only fair to have it in the record that the Farmers' Union, the Farm Bureau, the Grange, and the Equity are for this legislation and for this bill. If it is necessary to have them come here and repeat their statements, we can do that. I have been in communication with their offices here on that matter.

Mr. WELLS. I am not pretending to speak for those organizations. I am only speaking for the men with whom I come in contact.

The CHAIRMAN. You said you had conferred with many of them and had some knowledge of their position.

Mr. WELLS. I never said, Mr. Chairman, that they were opposed to this bill. I said they were opposed to anything that would impair the efficiency of the existing marketing machinery.

The CHAIRMAN. That is very indefinite. Of course everybody is in favor of that.

Mr. PURNELL. Do they think that this bill will have the effect of impairing the present marketing machinery?

Mr. WELLS. I do not think that any of them have had an opportunity to know what this bill means or what it will do. This bill, in my opinion, will lead to endless litigation, because it leaves open so many questions that will have to be determined sooner or later.

The CHAIRMAN. Now, that is the position that was taken by the gentlemen who appeared before this committee in opposition to the cotton futures act. We passed a law with reference to cotton futures. We do not pass laws or report out bills for the purpose of killing off anybody, but what we are trying to do is to provide for regulation; that was the purpose of the cotton futures act. I know of no opposition to that act now. Would you be willing to accept that same kind of a bill with reference to future trading in grain, the same rules and regulations that are provided for in the cotton futures act?

Mr. WELLS. So far as they are applicable.

The CHAIRMAN. This bill does not go that far.

Mr. WELLS. I beg your pardon. The cotton futures act does not regulate cotton exchanges in any way except on the grades that may be delivered on future contracts and the variations in price between the contract grade and the grades which may be delivered on contracts.

The CHAIRMAN. That is what was contemplated, that is what you are objecting to.

Mr. WELLS. That is only one feature.

The CHAIRMAN. If you were willing to accept what is in the cotton futures act I would be perfectly willing to accept that right here, but I have given up any hope of going that far in this bill. I tried to get a few similar provisions in the first bill but they were objected to; the bill went to the Senate, and came back from the Senate with amendments. They might just as well have stricken out everything after the enacting clause. We did put a few things back into the bill, and after conference it was passed about as it was reported from this committee; whoever submitted those amendments in the Senate certainly did improve on the House bill. If the exchange itself had written the amendments it could not have prepared amendments more satisfactory to the exchanges. Now, if it is the purpose to write a bill of that kind, which means nothing after it is enacted, what is the use of spending any time on it? If you are prepared for regulation that means something and gives the Secretary of Agriculture or somebody else the power to regulate these matters, then let us go on and prepare a bill; but if you are absolutely opposed to anything of that kind, what is the use of spending any time on it?

Mr. WELLS. Mr. Chairman——

The CHAIRMAN. You will have to be either for or against regulation, and if you are for regulation, what kind of regulation shall we have and what provisions shall we incorporate in the bill to provide for that?

Mr. WELLS. In the first place, reference is made to the cotton futures act, when that act does not pretend to say what form of reports shall be made, and does not pretend to say what members shall be admitted.

The CHAIRMAN. It is not necessary to discuss that at length. It provides for the determination of the commercial differences, also determines the standards and grades to be delivered.

Mr. WELLS. Yes; that is all.

The CHAIRMAN. And they are the official standards. That was suggested in this bill you were opposed to that you did not think that ought to go in. That is the very important part of the legislation. What we have in this bill here is simply a matter of publicity. Very well, as far as it goes, but it seems if anybody stands for legislation at all, they can not stand for anything less than what is in this bill. It may need some amendment, but unless we have a bill worth something, what is the use of spending weeks on hearings and taking up the time of the committee all the summer on something that does not amount to anything?

Mr. WELLS. If I may, I will proceed with a very brief discussion of the bill itself.

Passing over section 2, with its subdivisions (a) and (b), which contain a large amount of new matter and are really just definitions to which no objection is raised, we come to section 3, which is a recital, as I take it, of the reasons for imposing governmental regulations upon future trading. I wish to go on record as saying that after looking over the record before this committee I find nothing that would justify the words on page 4, line 5, beginning with the last word:

"That the transactions on such boards are extremely susceptible to speculation, manipulation, and control and sudden or unreasonable fluctuations in the prices thereof frequently occur as a result of such speculation, manipulation, or control"—

Skipping down to line 12—

"And makes such business unsafe and uncertain from time to time."

As I say, I fail to find in the record any testimony from men of experience that transactions are extremely susceptible to speculation, manipulation, and control. It has been admitted that at times, under abnormal conditions, there have been evidences of manipulation, possibly there has been manipulation, but it is not a continuing feature of the markets; it is something which happens in all kinds of markets under abnormal conditions.

Mr. VOIGT. Mr. Wells, right there, let me ask you this: If this sort of manipulation can take place under abnormal conditions, then it seems to me we ought to have some regulatory power in existence to avoid the manipulation, no matter under what conditions it occurs. If your statement is true that the manipulation takes place only at rare times and that ordinarily the market runs along in an orderly and honest course, then do you think that any Secretary of Agriculture would interfere with the markets except in case of manipulation?

Mr. WELLS. I think that the provision which is made in this bill later on, requiring the boards to restrain members from manipulation, together with the penalty which is inflicted upon any individual who attempts manipulation, would have the effect which is desired. I think that the moment that power is put in the hands of anyone, whether the Secretary of Agriculture, or whoever it may be, at that moment you create the uncertainty and doubt in the minds of traders to which I referred a few minutes ago, which drives them out of the market.

Under the Minnesota law there have been no prosecutions; there have been no threats of prosecution; but nevertheless traders have left our market because there was on the statute books a law, which, perhaps, is and perhaps is not constitutional, but it is there, and they fear that law might be enforced to their loss.

Mr. KINCHELOE. Do you think the Minnesota law is more drastic than this bill?

Mr. WELLS. In some ways it is; in some ways not.

Mr. KINCHELOE. I mean, as a general proposition.

Mr. WELLS. Well, nobody knows what it means. I think that in some ways it is more drastic.

Mr. KINCHELOE. You mean the State law is?

Mr. WELLS. Yes.

Mr. TINCHER. I am not willing, Mr. Wells, to let your statement with reference to the record go unchallenged. I do not want to extend this discussion in the record, but a certain witness testified before the committee, and I think he said, or perhaps he quoted somebody as saying, that gamblers or speculators could get together secretly and conspire to affect the prices.

Mr. WELLS. Yes; that is a quotation from a statement I made, but it is a quotation in part. I said they could affect the prices; that such a thing was a possibility; that they could affect them temporarily. The balance of that statement was not in the record.

Mr. TINCHER. If they could affect the market temporarily, they could probably affect it long enough to get the grain out of the farmers' hands, at any rate.

Mr. WELLS. No; I think not.

Mr. TINCHER. Right after that testimony you went into some detail concerning a certain manipulation of the market that was carried on by the English buyers, whom you described then as the keenest merchants in the world, so far as you knew. That was permissible and possible under this system that we are now attempting to regulate, was it not?

Mr. WELLS. That took place when governmental agencies were doing the buying, when individuals were eliminated, and as a result of a war-time measure. That condition does not exist to-day and never existed before that time.

Mr. TINCHER. Well, now, the price of grain goes down in the season that the farmers have to sell it. If the speculators got together and conspired and affected the price all during that season, that would affect the farmers' grain in any other season, would it not?

Mr. WELLS. Considering that as a hypothetical case, yes. But taking the figures of the Department of Agriculture for a period of 20 years you will find that the price of grain in the fall was never at a sufficient discount under the price which prevailed in the spring to pay storage interest and insurance on the money invested in carrying the grain. Consequently your statement is, hypothetically, all right, but the facts do not bear it out.

Mr. TINCHER. Right on that point: If you concede that your present marketing system—as you conceded before the Supreme Court used this language—that there was a possibility under that system of speculators conspiring together to affect the price of grain, won't you go further and concede in this hearing that there is a public interest attaching to this matter——

Mr. WELLS. No.

Mr. TINCHER (continuing). That the foodstuffs of this country, such as grain, which is used in every household in the United States and that the farmer of necessity to market in interstate commerce—that that is a question in which there is a public interest? Do you think it would be right to allow one man, if it were possible under the system, to affect those prices by manipulation?

Mr. WELLS. No; I do not; but I do not think it is possible under the system.

Mr. TINCHER. But do you not think there would be a public interest attached, if that were true?

Mr. WELLS. I think if there were a constant or frequent practice of affecting the price received by the producer by future trading, there is a possibility that there might be a public interest, but I do not think that condition exists.

Mr. TINCHER. Let me get your distinction, Mr. Wells. Your distinction is that inasmuch as there is only an occasional affecting of the price, perhaps the public interest does not attach?

Mr. WELLS. I think that future trading is merely an incident indirectly relating to the handling of grain, just as fire insurance is indirectly related to the handling of grain.

Mr. TINCHER. But when you are claiming for future trading the advantages of insurance and the advantage of hedging, how can you say that it is merely incidental?

Mr. WELLS. It is an incident. I can get along without future trading, but I will have to transfer the risk now carried by the trader to the farmer. In other words, I will have to buy cheaper from the producer and operate on a wider margin.

Mr. TINCHER. Take the May option, for instance, which was $1.48 on the 15th day of May and closed at $1.16 on the 31st day of May. I suppose that when section 4 was held unconstitutional, leaving the trading absolutely free and easy, they just transferred the risk to the farmer, did they?

Mr. WELLS. No; I do not think it had anything to do with declaring anything unconstitutional.

Mr. TINCHER. The Chicago newspapers, which I feel sure would not displease the Chicago Board of Trade, carried the headlines the next day that May options had increased 4 cents a bushel.

Mr. WELLS. You can not claim that the Chicago Board of Trade or the Minneapolis Chamber of Commerce is responsible for the stories written up for public consumption by market reporters, because they are not.

Mr. TINCHER. I do not charge that, but I do believe that if wheat had gone up 32 cents instead of down between the 15th and the 31st of May, the Chicago Board of Trade would have claimed credit for that.

Mr. WELLS. I can only say that if you were in the grain trade you would know that the advance in grain was led by the foreign markets. They controlled the situation. The Argentine and Liverpool markets went up more rapidly than our markets went up.

Mr. TINCHER. You cite the Minnesota law and this law that was held unconstitutional as probably contributing to the decrease in the volume of future trading?

Mr. WELLS. Yes.

Mr. TINCHER. Now, let me call your attention to this: If you are going to account for the decrease in the price of wheat by the decrease in the volume of future trading, why, you are welcome to that comparison, because the present price of wheat as compared with pre-war prices is more favorable to the producer than the price of any other article I know of. For instance, there never was a time in the depression after the war when the price of wheat got down as low as it was in the month of August immediately prior to the breaking out of the World War, which created a market for wheat. That is not true of any other farm product. So I do not see that we can give you any great credit for decreasing the volume of trading in futures in the grain market.

Mr. WELLS. I am not citing that decrease in volume as affecting prices particularly. I do say I think it has a depressing effect. because there are not the buyers in the market that there used to be, and the public generally in the market were buyers.

Mr. JONES. You said, Mr. Wells, that the decrease in buying in the Minneapolis market was due to the Minnesota law. Now, Mr. Gates yesterday complained of a similar decrease in the Chicago market. The Minnesota law does not apply there, does it?

Mr. WELLS. The Minnesota law affected us before any other law came into effect. Then came the agitation for a Federal law. It is the agitation that has driven the traders out of the grain market. No action has ever been taken under the Minnesota law. Illinois agitated for a similar law last winter, and that undoubtedly hurt the Chicago market just as directly as the Minnesota law hurt the Minneapolis market.

Mr. JONES. Oh, well, there has been agitation for the last 25 years, to my knowledge.

Mr. WELLS. I know; but the agitation has been far more violent in the last two years than it was over any extended period prior to that time.

Mr. JONES. There have been bills before the House here ever since I have taken any interest in poiltics. They have been introduced, and they have had hearings on them from time to time.

Mr. WELLS. Yes; but the matter has never taken the serious aspect that it has in the last two years.

Mr. JONES. I think it would be fair both to you and to the committee if you would give us your idea of the real reason for wheat going down between May 15 and May 31, if you have reached any conclusion on that subject.

Mr. WELLS. As a matter of fact, I suppose you would find almost any man in the grain business more reluctant to express an opinion as to the reasons for a price movement than some man out on the curbstone here. I do not pretend to know what makes wheat go up and down, except with reference to the general price levels. As far as any market fluctuations are concerned, I do not follow them at all.

Mr. VOIGT. Well, what is your suspicion about the reason for that recent violent drop?

Mr. WELLS. My suspicion is that the wheat was brought to Chicago and delivered on the contracts, and the short interest in the market was eliminated.

Mr. JONES. There have been no Government crop reports in that period?

Mr. WELLS. No. There was a natural congestion, and when it was satisfied the price sagged off to where it probably would have been anyway.

Mr. JONES. There was local congestion in the centers, and the grain that happened to be shipped in——

Mr. WELLS. Satisfied that condition, down to a level which it would have held, probably, but for that congestion.

Mr. RAINEY. And the article that Mr. Tincher referred to in the Chicago newspaper merely proved the unfamiliarity that the particular gentleman who wrote it had with the grain trade?

Mr. WELLS. Exactly. I might cite a case right in my own market. As a matter of fact, my own market is away above the Chicago market.

Mr. KINCHELOE. In price?

Mr. WELLS. In price; yes—away above it. All during the so-called congestion in Chicago cash wheat in Minnepaolis sold at a premium over Chicago all the time.

Mr. KINCHELOE. The same kind of wheat?

Mr. WELLS. No; spring wheat. We are a spring-wheat market.

Mr. JONES. Has there been any corresponding reduction in the price of flour during that period—during the month of May—when it practically went down 32 cents a bushel?

Mr. WELLS. There has not been that drop in the Minneapolis market.

Mr. JONES. How much of a drop has there been in that period?

Mr. WELLS. I do not know, to tell you the truth; but I know that our market has not dropped as rapidly as the Chicago market.

Mr. JONES. There is not anything like 32 cents difference in the market?

Mr. WELLS. Yes; there is. Our July wheat is 32 cents over Chicago to-day, and our cash wheat is 6 or 7 cents over July.

Mr. KINCHELOE. Do I understand you to say it is the same kind of wheat?

Mr. WELLS. This is spring wheat.

Mr. KINCHELOE. On both markets?

Mr. WELLS. No; spring wheat on our market and winter wheat in Chicago.

Mr. JONES. So your future trading and your broad liquid market does not seem to keep these violent fluctations from coming. If the price on one board of trade is 30 cents higher than on the other, why, the insurance is not worth anything apparently.

Mr. WELLS. Yes. Ours is an entirely different market from Chicago; it is a different entity.

Mr. JONES. Chicago is purely a future market?

Mr. WELLS. Yes. Why is our market the way it is? Because there is not the cash wheat to ship in.

Mr. KINCHELOE. Do you not think that might cut a figure in the difference in the price?

Mr. WELLS. Yes; it is scarcity.

Mr. KINCHELOE. Spring wheat sells for more than fall wheat, does it not?

Mr. WELLS. Generally, but it is the scarcity of spring wheat at the present time, at the tail end of the crop, that affects our market. But it has not been my intention, gentlemen, to go into this question of prices, because you can argue that out as far as you like and not get anywhere on it. It is just the general principles I want to touch upon.

The CHAIRMAN. It is suggested at this end of the table that that has been gone over. Perhaps you had better devote yourself to the changes you desire to suggest.

Mr. WELLS. If you will let me continue with my consideration of the bill I will suggest changes as I come to them.

In connection with section 3 I have said that I do not believe the record afforded a foundation for that statement——

Mr. JONES. Every one of you gentlemen has spent a great deal of time in discussing section 3. That is more or less of a preliminary statement; it just declares——

Mr. WELLS. I know, but it is the basis for section 4, and it concludes with the statement that these conditions recited render regulation imperative for the protection of such commerce and the national public interest therein. So it is of very great importance.

Mr. JONES. It is of importance purely from the standpoint of the legality of the bill, and that is all I see.

Mr. WELLS. In connection with section 3 I should like to introduce a report which went to the House of Representatives, Report No. 44, Sixty-seventh Congress, first session, a report on H. R. 5676. I have read that report carefully, and it apparently contains nothing which would afford a basis for the statements made in section 3.

Mr. KINCHELOE. That is the report on the original bill as it passed the House?

Mr. WELLS. Yes, sir.

Mr. TINCHER. Well, the new report will be more voluminous, because the Supreme Court is attaching more importance to the reports now.

(The report submitted by Mr. Wells is here printed in full, as follows:)

[House Report No. 44, Sixty-seventh Congress, first session.]

The Committee on Agriculture, to whom was referred the bill (H. R. 5676) taxing contracts for the sale of grain for future delivery, and options for such contracts, and providing for the regulation of boards of trade, and for other purposes, having considered the same, report thereon with the unanimous recommendation of the entire committee that the bill do pass.

Hearings on a similar bill, introduced on December 6, 1920, were held by the committee almost daily during the month of January, 1921, and were concluded in February. Scores of witnesses were heard by the committee, among which were Secretary of Commerce Hoover; Julius H. Barnes, late head of the United States Grain Corporation; Clifford Thorne, who had made a careful study of the existing situation for the American Farm Bureau Federation, and the heads of all of the great grain exchanges of the United States. Every angle of future-trading legislation was thoroughly discussed.

As a result of the great mass of testimony offered the committee during the last session of the Sixty-sixth Congress, House bill 2363, taxing contracts for the sale of grain for future delivery and options for such contracts, and providing for the regulation of boards of trade, and for other purposes, was introduced on the first day of the present session, and referred to the committee.

A copy of the complete hearings on future-trading legislation, consisting of a volume of 1,070 pages, comprising the testimony of 80 witnesses, before the committee during the last session of the Sixty-sixth Congress, was distributed to each new member of the committee, for his perusal and study; and the information contained therein was examined carefully by the new members. Daily hearings on the new measure were held by the committee for one week, at which hearings the grain exchanges were again represented, as well as all other interests.

At the close of the hearings the committee were in complete accord in the recognition of the fact that the legislation would be beneficial and should be enacted; and the bill as agreed to was reintroduced on May 3, 1921, and designated as H. R. 5676. It meets the views of the entire membership of the committee and is in complete consonance with the views of the Secretary of Agriculture. It has also the indorsement of the trade in general, of the farmers and people interested in agriculture, including the National Grange, Farmers' Union, American Farm Bureau Federation, and of the consuming public.

This measure will absolutely wipe out of existence the practice of "puts" and "calls," "ups" and "downs," and "indemnities." And while it will not abolish speculation or what is known to the trade as the "legitimate hedge," it will absolutely destroy manipulation, and it will make for uniformity among all markets.

Mr. RIDDICK. Mr. Wells, in your judgment, did the bill as originally passed interfere with the flow of grain from the producer to the consumer?

Mr. WELLS. No.

Mr. RIDDICK. But you think this bill does?

Mr. WELLS. Well, I think the bill as it is does interfere with the hedging markets.

Mr. RIDDICK. Did it interfere with the flow of grain from the producer to the consumer, at the proper price?

Mr. WELLS. I will answer that by saying that in my opinion, based on 30 years' experience, there is nothing in future trading that interferes with the flow of grain from the producer to the consumer.

Mr. TINCHER. Well, the price of grain would affect the flow, would it not?

Mr. WELLS. It never has been demonstrated that the price of grain affects it in any way except favorably, taking it by and large.

Mr. TINCHER. But I say, would the price of grain affect the flow of grain in commerce?

Mr. WELLS. Prices do not affect the flow so much as the relative prices of markets.

Mr. TINCHER. All right. Do the relative prices affect the flow of grain?

Mr. WELLS. The relative prices affect distribution, but they offer no impediment or obstruction whatsoever. It would affect the distribution, the available supply going to those centers of distribution where the supplies were required.

Mr. TINCHER. Now, then, your statement that prices would affect distribution, or flow——

Mr. WELLS. Relative prices.

Mr. TINCHER (continuing). And your statement or admission that speculators can conspire together to affect the price——

Mr. WELLS. I have not made the statement that speculators can conspire together to affect the prices. I said that if they conspired together it might affect prices.

Mr. TINCHER. I quoted your previous statement to this committee.

Mr. WELLS. And that is explained in that record.

Mr. JONES. Do not people generally speculate more on the future market when wheat is going up?

Mr. WELLS. Yes.

Mr. JONES. And is not the falling off in trading on your exchanges in large measure attributable, probably, to the fact that in the aftermath of the war there has been a continuous downward tendency in all products, wheat and other products, and therefore the man who is inclined to speculate, the outsider, who furnishes a good part of the market, is not inclined to speculate as much?

Mr. WELLS. That is true to a great extent, but at the same time we have not had the buying power which you would expect, even under the conditions which existed.

Mr. JONES. You have not had enough bears to take care of the production?

Mr. WELLS. We have not had enough bulls to take care of the hedges that were offered.

Mr. JONES. But that would naturally follow from a gradually sagging market?

Mr. WELLS. That is more marked in a sagging market; yes.

Now, gentlemen, on section 4 I have no particular comments to make.

In section 5 we come to subdivision (a), on page 6, line 8. I object most strenuously to the words added at the end of that subdivision, "approved by the Secretary of Agriculture for the purpose." Mr. Morrill tried to justify the addition of those words the other day by citing the case of a tiny little market down in the Southeast somewhere that applied for designation as a contract market, which they would have to refuse because of the fact that they had no satisfactory weighing and inspection facilities.

Now, that is not the only requirement. If the market were of the character described by Mr. Morrill, it would be precluded from designation by the balance of that definition:

"Where cash grain of the kind specified in the contracts of sale of grain for future delivery to be executed on such board is sold in sufficient volumes and under such conditions as fairly to reflect the general value of the grain and the differences in value between the various grades of such grain."

Now, a market such as Mr. Morrill described could not receive cash grain in sufficient volume to reflect these various conditions required for designation. Refusal does not have to be based solely on weighing and inspection service. Furthermore, if it received a sufficient amount of grain to reflect those various conditions, then it must of necessity have officially recognized inspection and weighing.

Mr. TINCHER. But you will concede, of course, that a place to be designated as a contract market should have sufficient facilities for weighing and grading?

Mr. WELLS. Absolutely; there is no question about it, and they should have been recognized. That means that they must be recognized by the producer and by the trade at large, who have used them and are satisfied.

Mr. TINCHER. Of course, you understand that in this bill there is no provision or suggestion that the Government would do any weighing?

Mr. WELLS. No; but they may do it just the same.

Mr. TINCHER. No. The Secretary must approve of the weighing and grading facilities of the place before he can designate it as a contract market. Why is there any objection to that?

Mr. WELLS. There is great objection, because we have established in Minnesota a weighing system second to none in the world. We have an inspection system which, prior to the Federal standard, was acknowledged all over the world.

Mr. TINCHER. Do you think the Secretary of Agriculture would be justified, or would contemplate for a moment saying that that was not a sufficient weighing and grading system?

Mr. WELLS. I do not say that he would; no. But, I say, why grant him the power to upset a well-organized, well-known system?

Mr. TINCHER. Well, to whom would you grant it? Somebody must have it, because, as you say, we must have sufficient weighing and grading. Somebody must have that power. Whom would you give that power to?

Mr. WELLS. That power is in the States now.

Mr. TINCHER. Well, but your State grades my wheat if I ship it in from another State. I ought not to have to rely on that. Whom would you rather leave it to—44 States—to see that this weighing and grading is all right or to the Secretary of Agriculture?

Mr. MCLAUGHLIN of Michigan. Mr. Wells, it seems to me you would not give the Secretary of Agriculture authority even to approve this system?

Mr. WELLS. I would not make its acceptance subject to the approval of the Secretary of Agriculture. I do not think it is a safe thing to do, Mr. McLaughlin. You are having a dispute now under the stockyards act.

Mr. TINCHER. Not now.

Mr. WELLS. Well, you were.

Mr. TINCHER. Oh, they did have a law up in Minnesota—and since you have mentioned it I will cite it as a reason why the Secretary of Agriculture should have that power. They had a law up in Minnesota under which they would take my cattle, if I shipped them from Kansas up there, and weigh them and charge me for it, and pay the State officers a salary for it, when the cattle were in interstate commerce. Of course, the court knocked the law out the first time they had a chance at it. If you offer that as a reason why the Secretary of Agriculture should not have that power, I think most of the members of the committee would consider it a good argument for it.

Mr. WELLS. I will tell you where I am selfishly interested in this. In the first place, I do not believe in centralizing that power, so to speak, in a department. I have been in a department, and I know how they are constantly reaching out for more and more. That is a fundamental objection.

On the other hand, the elevators within the State of Minnesota are under the control of the railroad and warehouse commission. The weighing in those elevators is under the control of the railroad and warehouse commission. Now, I, as an operator, do not want to be placed in a position where the Federal Government and the State government can come in conflict and leave me up in the air, and I have got to follow the railroad and warehouse commission in everything I do.

Mr. TINCHER. I do not contemplate any trouble for you along that line, but I will say this, that the provision in the stockyards act, regardless of the fact that the packers, with the best legal representatives in the world, were here telling us that we would have rack and ruin if we passed that law—I believe that provision has produced better feeling in the trade generally and has done more to induce men to go back into the live-stock producing business than anything that has happened in Congress for a long time.

Mr. WELLS. I know nothing about that, but you can see my position as a grain man in Minnesota.

Mr. RAINEY. I will have to disagree with Mr. Tincher as to that—not that particular law, because the bill that this committee finally reported out adjusted the differences in a way that will probably be helpful. But there were some bills here that would probably absolutely destroy the live-stock industry if they had become law.

Mr. TINCHER. Oh, they would never get through Congress.

Mr. WELLS. In the bill as it stood, in order to receive designation as a contract market a market had to have officially recognized weighing and inspection service, and there was ample protection so far as that service was concerned, because unless the Secretary said, after investigation, "I find that to be an officially recognized weighing and inspection service," he did not have to grant the designation. But I do not believe in putting into a bill of this sort any direct, explicit authority which is not required, on the theory that it might be required some time. That need can be met when it arises.

Then we come to subsection (b), which provides for the making and filing of reports. There is no great difference of opinion except as to this. The reasons which Mr. Gates advanced yesterday for having the reports submitted directly by the members were entirely valid. In other words, the executive officers of these boards of trade are in the trade themselves, and it is not fair that they should have access to information or the possibility of access to information which would be detrimental to their competitors in the business.

Now, after the passage of the futures trading act the representatives of the various boards of trade met with the Solicitor of the Department of Agricul-

ture, and we agreed upon rules which it would be necessary for the boards to pass in order to receive their designation. I will submit here, if you will permit, a copy of a rule which was agreed upon and which was adopted by all of the contract markets as a requisite for admission and designation.

Mr. CLARKE. Just a moment. Who was it that agreed on this?

Mr. WELLS. The Secretary of Agriculture and the representatives of the markets applying for designation.

Now, the section of the rule which refers to section 5, subsection (b) in this act reads as follows. This is a rule that the exchange was required to pass:

"SECTION 1. Every member shall make or file such report and keep such record of his transactions as he is required to make, file, or keep by subclause (b) of section 5 of the act of Congress known as the futures trading act; and if he shall fail to do so he shall be suspended by the board of directors from all privileges of membership until he shall comply with the said provisions of said act."

I think that this indicates what the Secretary wanted and what he was willing to accept. Therefore I would suggest that in section 5, subsection (b), line 18, the words "by the board" be eliminated and, on line 19, the words "as the Secretary of Agriculture may direct" be also eliminated. Then, on page 7, line 4, I would suggest that the words "the board or" be eliminated, and at the end of the same line and continuing on line 5 the words "as the Secretary of Agriculture may direct" be eliminated.

If that were done that subsection would conform with the rule which the Secretary of Agriculture approved and which his solicitor drafted, and it would throw the responsibility for the keeping of the records and the making of reports upon the members of the boards rather than upon the boards themselves.

Mr. JONES. You can simply eliminate the language "as the Secretary of Agriculture may direct." It would hardly be necessary to eliminate the other.

Mr. WELLS. "By the board."

Mr. TINCHER. How would the Secretary of Agriculture get them to agree to that rule if he could not direct them?

Mr. WELLS. He directs the form of keeping the record.

Mr. CLARKE. So that the records of all transactions on any of these boards of trade would be forwarded to the Secretary of Agriculture direct?

Mr. WELLS. Or the Department of Justice; yes. It makes the section read this way, if I may read it:

"(b) When the governing board thereof provides for the making and filing by any member thereof of reports in accordance with the rules and regulations, and in such manner and form and at such times as may be prescribed by the Secretary of Agriculture, showing the details and terms of all transactions entered into by the board or the members thereof, either in cash transactions consummated at, on, or in a board of trade, or transactions for future delivery, and when such governing board provides, in accordance with such rules and regulations, for the keeping of a record by the members of the board of trade, showing the details and terms of all cash and future transactions entered into by them, consummated at, on, or in a board of trade, such record to be in permanent form, showing the parties to all such transactions, including the persons for whom made, any assignments or transfers thereof, with the parties thereto, and the manner in which said transactions are fulfilled, discharged, or terminated. Such record shall be required to be kept for a period of three years from the date thereof, or for a longer period if the Secretary of Agriculture shall so direct, and shall at all times be open to the inspection of any representative of the United States Department of Agriculture or United States Department of Justice."

That simply throws the burden on the governing body to compel the member to furnish such reports as the Secretary may direct——

Mr. JONES. If you eliminate the reference to the board, so as to have the members make the reports, what is the objection to leaving in "as the Secretary of Agriculture may direct"?

Mr. WELLS. Well, it does not make any difference. That may be left in.

Mr. TINCHER. But the Secretary of Agriculture does not want to have to look to each individual member; he wants to hold the board responsible to him. I agree with you to this extent, that we ought to be able to do it and still obviate the necessity of a man submitting himself to the possibility of the board examining into the details of his transactions.

Mr. WELLS. The best answer to that is this. Here is the rule which the Secretary accepted and which was drafted by his solicitor. That answered his requirements, and it was passed by the various boards before they were designated as contract markets.

Mr. TINCHER. Of course, it has been discovered since then that he does want in that report the names of the parties.

Mr. WELLS. I have no objection to that. If I may, I will submit this rule as indicating what was accomplished.

(The rule referred to by Mr. Wells is here printed in full, as follows:)

"SECTION 1. Every member shall make or file such report and keep such record of his transactions as he is required to make, file, or keep, by subclause (b) of section 5 of the act of Congress known as the future trading act; and if he shall fail to do so he shall be suspended by the board of directors from all privileges of membership until he shall comply with the said provisions of said act.

"SEC. 2. No member shall disseminate any false, misleading, or inaccurate report concerning crop or market information or conditions that affect or tend to affect the price of commodities, and any member who shall knowingly or carelessly disseminate such report shall be suspended by the board of directors from all privileges of membership for such period as the gravity of the offense committed may warrant.

"SEC. 3. So member shall attempt to manipulate prices of commodities, nor corner or attempt to corner any grain, and any member who shall knowingly or intentionally violate the provisions of this section shall be suspended by the board of directors from all privileges of membership for such period as the gravity of the offense committed may warrant.

"SEC. 4. The board of directors is authorized to take such other steps as may be necessary or advisable to make effective subdivisions (c) and (d) of section 5 of the future trading act.

"SEC. 5. Any member who, under subclause (b) of section 6 of said future trading act, shall be deprived of the privilege of trading in contract markets, shall be suspended from all privileges of trading on the exchange of this association for such period as may be specified in the order of the Secretary of Agriculture against such member.

"Any member who shall accept, or execute, an order from any person who shall have been deprived of the privilege of trading in contract markets shall be suspended from all privileges of membership in this association for such time as the directors, in their discretion, shall determine.

"SEC. 6. In order to comply with the act of Congress known as the future trading act, it is hereby provided that all rules of this association shall be construed with reference to, and shall be deemed subject to, and modified by, the provisions of said act."

Mr. WELLS. As far as subsection (c) is concerned——

Mr. MCLAUGHLIN of Michigan. You said, Mr. Wells, you were going to submit the rule?

Mr. WELLS. I have put it in the record, Mr. McLaughlin.

Mr. MCLAUGHLIN of Michigan. Do you approve that rule?

Mr. WELLS. That rule was passed by all of the markets designated as contract markets.

Mr. MCLAUGHLIN of Michigan. That is, it was satisfactory to them?

Mr. WELLS. It was drafted by the Solicitor of the Department of Agriculture in connection with representatives from the markets applying for designation.

Mr. MCLAUGHLIN of Michigan. And generally accepted by them?

Mr. WELLS. It was passed by all the markets.

Now, we come, on page 8, to section 5, subdivision (d). There is no question about the inclination of the boards and their desire to eliminate manipulation of prices, and you will notice in the rule which I submitted, and which was adopted, that they obligate themselves to do everything in their power to accomplish that end. You must, however, bear in mind that it is impossible always to prevent the misuse of facilities, no matter whether they are marketing facilities or any other; but the offender can, and under this contract, would be punished for such misuse.

I want to call your attention to one more thing, as regards the effect of this legislation upon manipulation. Anything that is done to narrow the trade on the markets facilitates manipulation. There is no question about that. It is a great deal easier to manipulate a narrow market up or down than it is a broad, liquid market, because the manipulator does not meet with the opposition that he would where there was a great volume of trade. I think you should bear that in mind in connection with any restrictions which you place upon future trading which would tend to limit or reduce the volume of trading.

Then we come to the much-discussed subsection (e), relative to cooperative exchanges.

I wish you would bear in mind that the objection to cooperative exchanges is not an objection to the organizations as organizations. It is simply an objection based on the fact that their method of doing business will make it impossible to maintain a uniform commission rule. You can go into any organization in the country where commission rules exist, and you will find that where there has been a breaking down of a uniform commission rule the results have been entirely unsatisfactory. Senator Kendrick told us during the hearings before the Senate committee that at one time the live-stock exchanges got away from the uniform commission rule, and as a result there was a cutting of commissions to such an extent that the commission houses lost their financial stability, and shippers entrusting their cattle to them often had to face a loss; and, furthermore, that it led to the corruption of dealers in the country, because commission merchants would go and make them offers, either of cash or of a proportion of the commission, in order to influence shipments. It is the breaking down of the commission rule that we object to, and not the admission of any class of organizations. We would be very glad, and have repeatedly offered, to admit to membership duly qualified representatives of cooperative organizations, provided they were willing to abide by all the rules and regulations affecting other members.

Mr. KINCHELOE. Where do they violate the commission rule except in the distribution of their profits?

Mr. WELLS. They do not; that is the whole basis of it.

Mr. KINCHELOE. Well, why did they disarrange and disorganize it, as Senator Kendrick indicated, in the stockyards business?

Mr. WELLS. For the simple reason that these cooperative societies, most of them, do business for people other than their members.

Mr. KINCHELOE. I can not see why that would destroy the equilibrium of your rule.

Mr. WELLS. Because you can not ask one man to maintain a fixed commission and allow another man to allow to his customer a part of that commission.

Mr. PURNELL. Mr. Chairman, I have an engagement before the Senate committee, and I desire the privilege of proceeding out of order for just two minutes.

We have one more day under the rule, and some of those who favored reporting out the sugar claim of Mr. De Ronde felt that he did not have a day in court, and some of us who believed the claim was meritorious and that he ought to have an opportunity to be heard by the House feel that he should have that opportunity on this next day, for at least an hour, or 30 minutes anyway. I want to bring that matter to the attention of the committee.

I move that on Thursday—if that is the day we are to have—the chairman be instructed to call up this claim, with the understanding that there shall not be more than one hour of general debate.

(After brief informal discussion the question was called for, and the motion, having been duly seconded, was put and was declared lost. A roll call was called for, and the clerk of the committee announced that the vote stood: Ayes 5, noes 8. So the motion was lost.)

Mr. KINCHELOE. Before the passage of the act would these cooperative organizations rebate the commissions in the course of the transaction——

Mr. WELLS. No; settlement was made afterwards in proportion to the volume of each man's shipment.

Mr. KINCHELOE. The thing I can not understand is this. What business is it of any other member of the exchange if I go in there and clean up some money and make a profit and put it in my pocket, whether I give it to you or keep it myself?

Mr. WELLS. That is not the question. That is not the way it works.

Mr. KINCHELOE. How does it work? You say they do not distribute it until after the profits are all made and the deal is closed?

Mr. WELLS. They solicit and obtain business on the basis of returning the shipper a portion of the commission which he pays, and that is unfair competition, and it has always led to a disastrous breakdown of all markets where it has been tried.

Mr. MCLAUGHLIN of Michigan. Most of these people with whom business of this kind is done join in an association and become parts of an entity, and that entity does business and distributes its profits among those who compose the association.

Mr. WELLS. In proportion to the business which they furnished. Consequently, it is a rebating of the commission.

Mr. MCLAUGHLIN of Michigan. We have often discussed that here, and I have got the impression that that was not the principal objection on the part of the exchanges to the admission of these cooperative associations.

Mr. WELLS. Were it not for that method of doing business, there is no rule on any exchanges' books that would exclude them.

Mr. MCLAUGHLIN of Michigan. And I understood that they failed in some other way to comply with the rules of the exchange.

Mr. WELLS. That is the only one they have refused to accept, and they do not all refuse to accept that.

Mr. MCLAUGHLIN of Michigan. I do not think I am wrong in saying that some of you gentlemen who have not been favorable to the admission of these cooperative associations have said that you were not particularly objecting to the return of profits. I can not tell now what the objections were that were raised, but it seems to me there were other objections than that.

Mr. WELLS. I think not, Mr. McLaughlin.

Mr. VOIGT. There was one chief objection raised, and that was that these people distributed their profits back to the people who run the business.

Mr. WELLS. Mr. Young testified in the Senate that over 50 per cent of the business done by the Equity Cooperative Exchange was done for outsiders, for persons outside of their own membership.

Mr. TINCHER. Of course, you would have a rule which would prevent them from distributing profits to such persons.

Mr. WELLS. Yes; but there is a very easy subterfuge. You can not say what their membership fees shall be, and they can charge a man a dollar for membership, if they wish.

But I will say this, gentlemen, that I think the farmers' organizations, working with the grain exchanges and the committee to which Mr. Gates referred yesterday, are going to work out some solution which will be satisfactory.

It may be interesting to you to know this. The Northwest Wheat Growers' Associated, which is a farmers' organization, handling grain largely, on the Pacific Coast, has recently conferred with the chamber of commerce in Minneapolis relative to membership, and the terms were laid down upon which they could secure membership. That organization is purely a sales agency for its members. They put all of their wheat in a pool and market it, so that the question of a commission is not involved at all. They were told that, being a nonstock company and nonprofit company, they would have to furnish some guaranty to insure the enforcement of their contracts, the contracts into which they entered, and they said they were perfectly willing to put up Liberty bonds or cash or a fidelity bond of such amount as we might require, and so they are coming into the exchange.

Mr. MCLAUGHLIN of Michigan. You say they are to be admitted, or the action that has been taken would indicate they are to be admitted, notwithstanding the fact that they give back to their members a portion of the profits?

Mr. WELLS. It is not that. Mr. McLaughlin; they are purely a sales agency. All the grain they handle belongs to their members, and they handle it at cost. There is no commission charged at all. The members pay their pro rata share of the expense and divide up what is left. The grain all belongs to the organization that sells it.

Mr. TINCHER. Do you believe that a man who was not a member of an organization of that kind would ship wheat to them simply to get the pro rata share of the profits?

Mr. WELLS. I can remember the days when they had no commission rule in Duluth, and I know that a quarter of a cent or an eighth of a cent a bushel would influence a shipper to go from one commission house to another.

Mr. TINCHER. It would not influence me to do that.

Mr. WELLS. I know; and it would not influence me, either.

The CHAIRMAN. Their representatives are paid a salary, are they?

Mr. WELLS. These Northwest wheat growers?

The CHAIRMAN. I mean the cooperative societies?

Mr. WELLS. Oh, yes.

The CHAIRMAN. Then the profit they make belongs to the association, does it not?

Mr. WELLS. It belongs to the sales agency, and they distribute it according to the business furnished by the different shippers.

The CHAIRMAN. If it is a cooperative association the profits belong to the association?

Mr. WELLS. Yes.

The CHAIRMAN. They are entitled to the profits, aren't they?

Mr. WELLS. But that is not the way they work.

The CHAIRMAN. The profits belong to the stockholders of the association, of course?

Mr. WELLS. They have no stockholders; that is the point. If they had stockholders and declared dividends like any other corporation, it would be different. But the commission is rebated on the basis of the business furnished.

The CHAIRMAN. It is their money; it is their profit.

Mr. WELLS. If only the actual producers who raised the grain were shipping to that agency, then it would not be such a serious matter, but they solicit business outside of their membership on the same basis.

Mr. KINCHELOE. From nonmembers?

Mr. WELLS. Oh, yes; nonmembers as well.

The CHAIRMAN. Every shipper is a member, is he not?

Mr. WELLS. No.

The CHAIRMAN. Is not every customer a member?

Mr. WELLS. No.

The CHAIRMAN. What is the requirement for membership? It is composed of shippers, is it not?

Mr. WELLS. Oh, no. They have to join the association, and they pay a certain fee for joining it.

The CHAIRMAN. They have members who pay fees, and they have other members that do not pay fees?

Mr. CLARKE. I think the test of membership is the fact that they are producers, and all of their product goes into the pool.

Mr. MCLAUGHLIN of Michigan. My impression is that if they do business for outsiders they ought to charge the regular commissions, exactly the same as other commission merchants charge. They ought not to do business with outsiders on the same basis as they do business with the members.

Mr. CLAGUE. In Minnesota I belong to at least three of these cooperative societies. We buy not to exceed four shares. The four shares will be $40, we will say, or they may be $25 shares. Then we are first entitled to take out 8 per cent in dividends. I think all of our societies provide for that. Then the profits over that are divided just the same amongst all members and nonmembers. The difference is that the nonmembers do not get the 8 per cent. The members get that 8 per cent on our stock, you see. We have to do that in order to get members. Then the nonmembers get their share of the profits, and that is a help to the stockholders. We get our 8 per cent in addition to that. That pays for our stock, and is necessary in order to keep up our organization.

Mr. MCLAUGHLIN of Michigan. It seems to me that that amounts to a splitting of commissions.

Mr. CLAGUE. That is true; but it is a mighty good thing for the farmer organizations just the same.

Mr. WELLS. There is no question at all that any of these organizations, if they wished to incorporate a stock company, could gain admission upon furnishing a suitable representative, to any board of trade, and I think the whole thing is being worked out.

Of course, it is rather difficult for a layman to find any direct connection between special privileges to be granted to members of an exchange and interstate commerce. I will admit I do not quite see where this section (e) belongs in this bill.

Mr. KINCHELOE. It was in the other bill.

Mr. WELLS. Yes; and it was declared unconstitutional; but this is under the interstate commerce act.

Mr. TINCHER. I can tell you why it bears a relation to interstate commerce. The Chicago Exchange is either a hindrance or a help to interstate commerce, and they are engaged in a business in the public interest. That being true, the question of who can be a member of that exchange is certainly a matter that is related to interstate commerce. Whether they can bar a certain class of people from membership in that great institution is certainly related to interstate commerce. I do not think there would be any question about that.

Mr. WELLS. I was speaking as a layman and without any definite legal advice. But our counsel did advise us that this section had no more place in this bill than it had in a taxation measure.

We now reach subsection (f), section 5, which is entirely new, and which I would say is more far-reaching in its effect upon future trading than anything that has been proposed.

A question arose yesterday as to the interpretation placed on this subsection by Mr. Gates, and I think Mr. Tincher felt that Mr. Gates misunderstood it. I requested a copy of the bill from the Secretary of Agriculture, and he forwarded to me a copy, together with comments, and in the comment on subdivision (f) of Section 5 this is stated:

"Subdivision (f) is a new subdivision, not found in the preceding statute, designed to give the Secretary of Agriculture power to deal with the question of grades that may be delivered on contract, premiums and discounts, inadequate elevator capacity, and any other conditions that may have similar importance in relation to the prices and executions of contracts."

That is a pretty sweeping interpretation of that subsection, but that shows what is in the mind of the man who drafted it, apparently, because I assume that these comments came from the solicitor of the department. The whole thing comes to me from the Secretary's office.

Now, it may be stated that in the cotton futures act, which has worked fairly well, I understand, certain grades are specified as being deliverable on contract and a certain system is set up for the determination of the discounts or premiums at which other grades may be applied on contracts. But cotton and wheat are entirely different, and they are growing more different every day so far as determining the intrinsic value of the two commodities are concerned.

Take the spring-wheat crop alone. The use of spring wheat is principally for domestic milling purposes. A very small proportion of the crop is exported. Now, not enough spring wheat is raised in the United States to-day to satisfy what used to be our domestic requirements, and the sustaining power in the spring-wheat market, so far as buying is concerned, is the miller. The spring wheat is ground there in the Northwest, both in the country and in the cities, or is shipped down the Lakes and ground at Buffalo and eastern mills. Only a very small proportion of the entire crop goes abroad; the spring wheat for export is now furnished by the Canadian Northwest.

Now, in order to get the buyer into the market and in order to make it safe for the hedger to protect himself by sales in the market the question of contract grades and premiums and discounts has to be a matter of compromise. If you were to consider the buyer alone you would make only the highest grade and the highest quality delivered on the contract. But that would immediately make it unsafe for the hedger, because that grade constitutes only a fractional part of the entire crop, and the hedger would be in danger of running into a congested condition all the while. So the question of grades deliverable on future contracts and the premiums and discounts for grades other than the contract grades is one which has to be determined by compromise, as I say, between the commercial interests involved.

Now, if you arbitrarily, by any department organization, attempt to fix those grades or the premiums and discounts, you are immediately going to narrow your market. The miller will not know what he is going to get on his contract, and consequently will not, to the extent he has done in the past, supply his requirements for future use by the purchase of future contracts, but will instead endeavor to buy up cash wheat. He will then become a seller of future contracts until such time as he makes flour sales and buys back his future contracts, leaving his wheat free for milling.

Cotton is a very different thing. There are certain grades of cotton and they have certain relative values. To a greater extent every year, and every day in the year, wheat is bought on sample rather than on grade. The grades are simply a general classification. There is a variation of 5, 10, or 15 cents, sometimes, in the same grade of wheat, because of the difference in gluten content, from the miller's point of view, of wheat from different localities. In my judgment, it would be absolutely impossible for the Secretary of Agriculture or his technical men in his laboratories to establish grades deliverable on contracts, or to establish premiums and discounts which would not have the effect of narrowing the markets very, very materially. And as I pointed out a few minutes ago, anything you do to narrow the markets increases the ease of manipulation, which is the thing you are trying to defeat. The Chicago market, for instance, has a wide variety of wheat deliverable, different grade of different varieties, because of the fact that it has tributary to it a large number of varieties of different wheats.

We know from personal experience that we can not rely on technical laboratory men to adjust these matters. There have been reports made apparently demonstrating, let us say, that No. 3 wheat was worth for milling purposes within 2 or 3 cents a bushel of No. 1 wheat. But in actual practice this relative value would not work out, and if this privilege of determining relative values rested with the Department of Agriculture the uncertainty surrounding premiums and discounts for grades deliverable on contracts and the arbitrary methods employed to determine those premiums and discounts would, in my judgment, absolutely strike at the basis of all future trading.

Mr. TINCHER. Now, Mr. Wells, the form of contract now rests with the board of trade. The form of that contract is not prepared by the buyer or seller; it is not as if you would sit down and buy a piece of property. It is a form of contract that is worked out, with the things you have mentioned taken into consideration, by a scientific body of men, known as the board of trade.

Mr. WELLS. Pardon me, but the form of contract is worked out by the buyer and seller, because the directors of the various boards of trade represent the different classes at interest.

Mr. TINCHER. But here is the point I am getting at: In this subject, where there is a national interest and where we have national grades and a national grading system——

Mr. WELLS. We also have State grades.

Mr. TINCHER. What objection would there be to having the Secretary consulted about the form of that contract? Your argument is that the Secretary of Agriculture, who is supposed to be at the head of the department and to have the interest of the producer at heart and to be interested in producing food for this country and encouraging production, would narrow the thing down so that it would be hurtful?

Mr. WELLS. No.

Mr. TINCHER. Do you not think that that would provide a definite, official head for it, which would be helpful to the trade?

Mr. WELLS. No. My objection is that the questions which are now settled on a commercial basis would be settled on a technical laboratory basis, and it does not work out. Those things never work out.

Mr. TINCHER. There was some trouble, was there not, about the closing up of the May option contracts?

Mr. WELLS. There was not any trouble. Wheat had to be brought from unusual places, because the man who sold it did not have it there.

To show you how these technical things work out, Mr. Tincher, let me say this: I was talking with a man from Kansas City the other day, speaking about Federal grading. He said, "Well, they have got it to a point now where a car of wheat will come in, and we will say it was cut with a header and lay on the ground and became stained. We never call that anything but stained, and we would sell that to the mills, and they would never pay any attention to it. But now a technical laboratory man takes that stained wheat and holds it up to a certain kind of light, and then holds it up to another kind of light, and he says that is bran burnt. What does the miller do then? He backs right away from it, and whereas he used to pay a fair price for that, to-day he says, 'That is burnt wheat, and I won't take it except at considerable discount.'"

Mr. TINCHER. Is that the fellow that works for the Government that does that?

Mr. WELLS. Yes; the technical man.

Mr. TINCHER. Well, he ought to be shot at sunrise.

Mr. WELLS. But that is the whole tendency of the laboratory determination of these things. Perhaps from a scientific standpoint that wheat is burnt; I don't know; but it never made any trouble until we had these highly trained technical men.

Mr. TINCHER. It is hard for me to conceive that a department of the Government is doing something that will work injury to the producer of grain.

Mr. WELLS. You write to Lonsdale about it. He was telling me about the conditions they had gotten into down there.

Mr. KINCHELOE. Did that affect the quality of the flour at all?

Mr. WELLS. No; it did not in the past.

Mr. JONES. As a matter of fact, Mr. Wells, your board does change the form of contract occasionally, does it not?

Mr. WELLS. Yes; but this puts it in the power of the Secretary, according to his own interpretation of this section.

Mr. JONES. You are afraid that some technical man will come in without actual knowledge of the grain business?

Mr. WELLS. I can only judge from what they have done elsewhere. For instance, there is a year when we in the Northwest only have, we will say, 25 per cent of No. 1 northern wheat, and the balance of the crop is largely No. 3 wheat. Now, the technical man says, "We have tested this wheat in our test mill, this No. 3 wheat, and it is worth within 4 cents a bushel of No. 1 northern." So you are directed to fix your discount on your No. 1 northern contract for delivery of No. 3 wheat at 4 cents a bushel discount.

Now, our millers know—they have practical laboratories, and they have gone further than the Government, and every big baker has his laboratory. Our millers know that flour made from that wheat will not sell at all. It is not a matter of 4 cents discount, it may not be worth within 14 cents of No. 1 northern, but the technical man in the laboratory in Washington says, "My tests show that this wheat is worth 4 cents a bushel less than No. 1 northern."

Now, what is going to happen in a situation like that? Do you suppose the miller will ever go in and buy a future contract? Instead of being a buyer of futures he will select his wheat and put it away, and he will be a seller of futures as a hedge. He will remove his buying power from the futures market, and when he sells his flour he will buy back his future contract.

You can not run those things technically. It has to be a matter of commercial experience and practice. The interests of the buyer and seller are both at stake, and no contract that is unfair to either buyer or seller will enjoy any popularity.

Mr. Tincher speaks a great deal about the form of the contract. It is not a question of the form of the contract; the question of form cuts very little figure. It is a question of what is deliverable on the contract and what premiums or what discounts are to be enforcel on grades other than contract grades.

Mr. TINCHER. I think that the question of the grades deliverable under the contract, as shown by the form of the contract entered into, might become a very material proposition, as to whether the traders on the exchange could manipulate the price of wheat.

Mr. WELLS. They could if you restricted it to one grade that was just a very small proportion of the crop.

Mr. TINCHER. Now, absolutely following your suggestion there, getting back to the basis of this proposition, the question comes up, whose interests are at stake, and who should be consulted in deciding it? The producer's and the buyer's interests are looked after by the exchanges, and personally I am frank to say to you that I agree with the Department of Agriculture that this is a subject in which they should have some rights; that is, not for the purpose of hindering or hurting or finding something in the laboratory, but for the purpose of preventing manipulation. That is one of the objects of this bill.

Mr. WELLS. For the sake of argument, if it were possible to have a trade in a future that represented only 10 per cent of the crop, that would mean that that future would be all the time congested and the price would be way up. That would theoretically help the producer, but it would also immediately kill all futures. That 10 per cent would have a fictitious value, because it would be the only thing that could satisfy the contract. And that only constitutes 10 per cent of the producer's crop. Those things can not be fixed by any department, in my judgment. The case of cotton, where you can determine the value, is another thing. You can not determine the value of wheat. All No. 1 northern wheat is not No. 1 northern wheat, except in name. It all comes up to certain Government specifications, yes, but the chemical qualities of that wheat, its flour-producing qualities, show a variation in value of 5 or 10 cents a bushel. Those things have to be determined commercially.

And let me tell you again that the question of discounts is a very material question, for this reason: Suppose the Government said that No. 3 wheat should be delivered on No. 1 northern contracts at 10 cents discount. We will say the movement of the No. 3 wheat crop demonstrated that that grade had commercially a value within 5 cents of No. 1 northern. Do you suppose any of it would ever be delivered on a future contract? Not at all. That wheat would be sold, and the man would buy back his future contract. It would not mean that he would have to deliver it at 10 cents discount.

This bill puts it absolutely in the hands of the Secretary of Agriculture to dominate the whole marketing system of the country, and I do not believe there is any living man of sufficient intelligence to have that power placed in his hands. It is a power that is not given to any other department head in any form that I know of.

Mr. KINCHELOE. Have you ever had any trouble in the past about the contracts?

Mr. WELLS. Yes; and we have changed them during my career in the business.

Mr. KINCHELOE. The reason I ask that is this: I imagine that probably the Secretary had some reason for putting that in there.

Mr. WELLS. I believe that was put in on the basis of the cotton futures act, and the cotton, as I have tried to explain to you, is an entirely different thing from wheat. You can buy certain grades of cotton, and you know they are worth certain amounts of money. You can buy certain grades of wheat, and there will be a range of 15 cents a bushel in that same grade. Mr. Haugen spoke of that to-day. The two are not parallel at all.

Mr. TINCHER. Mr. Haugen has always taken the position, at all the hearings I have ever attended, that there was more opportunity for the manipulation of the grain market through the exchanges fixing the grades deliverable upon contracts to suit themselves than in any other way, and some things have transpired recently with reference to the closing out of certain futures which have rather confirmed me in the same idea. I do not know just who prepared that memorandum there construing this bill——

Mr. WELLS. I suppose Mr. Morrill did; I do not know.

Mr. TINCHER. I hardly believe that the section, concerning which I did know something before it went in, would give them all the authority that some of the men in the department would want.

Mr. MCLAUGHLIN of Michigan. It gives them authority as to the form and conditions of the contract. I think myself that there are a lot of things that they propose to take notice of that they would not have control over under a proper construction of that subdivision (f). I know they reach out and take anything within reach.

Mr. WELLS. I am absolutely opposed to that whole subsection. I think that if you leave that in the bill you are simply signing the death warrant of efficient hedging markets. It has never been in any other bill, and is far more radical and far-reaching, without any excuse for being incorporated in a bill.

Mr. KINCHELOE. I thought you might have some suggestions about amending it.

Mr. WELLS. I have no suggestions for amendment. In my judgment, elimination of that action is the only thing that will preserve the integrity of the future markets.

Now, you may say the Secretary would not do this and he would not do that. What right have we to delegate to a man authority which puts him in a position where he may do this or may do that?

Mr. TINCHER. The Secretary would answer that by saying that you would say the exchanges would not do this and would not do that, and what right should they have to determine whether they would do this or do that?

Mr. WELLS. I can only say this: The exchanges are made up of two bodies whose interests are diametrically opposed, the buyer and the seller. The seller wants to get as much as he can, and the buyer wants to pay as little as he has to. Consequently you always have those conflicting interests working in opposition.

Mr. TINCHER. However, Mr. Wells, those men are speculators——

Mr. WELLS. What men are speculators?

Mr. TINCHER. The men you speak of.

Mr. WELLS. The buyer and seller? No; they are not speculators. I am not a speculator, and I am one of the biggest sellers there is in the Northwest.

Mr. TINCHER. You are not a producer?

Mr. WELLS. I am not a producer; no.

Mr. TINCHER. That is what I mean. It has been admitted before this committee, by men high in the profession or business, that their big profits come with big fluctuations.

Mr. WELLS. Speculators?

Mr. TINCHER. Well, the men who buy and sell the product.

Mr. WELLS. No; I beg your pardon. I make less money if I buy wheat for a dollar and it goes up to a dollar and a half than I would make if I bought wheat for a dollar and it went down to 50 cents, because I have to pay interest and insurance on a higher value of grain.

Mr. TINCHER. You mean to say that you would make less money if you bought wheat for a dollar and sold it for a dollar and a half than you would if you bought it for a dollar and sold it for 50 cents?

Mr. WELLS. Exactly what I say, because my investment in one case is in dollar and a half wheat and I pay interest and insurance on that, and in the other case it would be 50-cent wheat, and I would have a reduced cost of carrying.

Mr. KINCHELOE. Then how do you make any money at all?

Mr. WELLS. Because it goes down to 50 cents a bushel—I have all my wheat hedged, mind you. If I buy it for a dollar and it goes down to 50 cents I get back 50 cents from the clearing house. Consequently I have invested in my wheat only 50 cents a bushel, and it obviously costs less to carry.

Mr. KINCHELOE. The hedgers pay you back 50 cents a bushel, which would be profit?

Mr. WELLS. No; it would not be profit.

Mr. TINCHER. I can easily understand how you must be likely to look at this matter through different glasses than the producer if you say you can buy wheat at a dollar and sell it at 50 cents and make as much as if you sold it at a dollar and a half. I can understand how there might be a little difference in the viewpoint.

Mr. WELLS. I simply cite that to show you that there is no advantage to me in having the price go up. The saving would be a saving of interest on the investment.

Mr. KINCHELOE. This section here gives the Secretary of Agriculture pretty nearly plenary power, but at the same time do you not think from a close reading of it that a lot of things would have to happen before he would exercise that power? It says here, "When the governing board provides for making changes," etc., and only "after investigation and public hearing and communicated by him to such board, which substantially affects the price or prices of such contracts so as to render them hazardous or unreliable as hedges or price bases for transactions in interstate commerce," etc. It seems to me that before the Secretary could take any step in exercising that power there would have to be a pretty bad situation.

Mr. WELLS. You gentlemen assume in all this discussion that the Secretary of Agriculture is going to administer the act. He does not.

Mr. KINCHELOE. Of course, he does not personally.

Mr. WELLS. He does not administer the act at all, and a great many things are done that the Secretary does not know anything at all about until after they are done.

Mr. KINCHELOE. But he certainly would not let his chiefs act on an important proposition like that without reference to him.

Mr. WELLS. The Secretary told me himself that he was handicapped in working out these problems because he can not pay enough money to get good men. He has some very good men. Mr. Morrill is an excellent man, and there are other men of that type. The particular men to whom he has to delegate this authority are not men of broad experience. They can not be, or they could not be secured by the department.

Mr. KINCHELOE. We have helped him a little just recently on that.

Mr. WELLS. Now, there has been a lot said about what the Secretary of Agriculture wants and what he does not want. I have been very closely in contact with Mr. Wallace, whom I claim as a good friend, for a year or more, and have been here for several conferences on different subjects, agricultural and otherwise, and the Secretary has told me, and I think he would say the same thing to-day, that what he wants is the authority to secure first-hand information so that he may make a survey of the marketing situation and make suggestions either to the boards of trade or to Congress for such changes in that system as would be of benefit to the producer. Now, that is exactly what Secretary Wallace has said to me repeatedly, and that is what he is for.

Mr. KINCHELOE. Did the Secretary have reference to the grading of spring wheat in that conversation?

Mr. WELLS. No; this was not in connection with grading. It was in connection with the future trading act. Now, that is what the Secretary wants, and that is what I am personally strongly in favor of granting him. I think the position of the grain exchanges has been consistent from the start. We are not opposing reasonable, sane supervision which is not burdensome and does not entail additional expense in the marketing of grain. We are opposed to regulation which restricts markets and which will inevitably reduce their efficiency. I think if you would ask Secretary Wallace, he would tell you what he wants is information, and I am strongly in favor of every legitimate step being taken to grant him the information he wants first-hand.

Mr. KINCHELOE. Have you ever discussed this special section with him?

Mr. WELLS. No; I just received this bill before I left home from the Secretary and I have not had an opportunity to see him.

Mr. THOMPSON. Mr. Wells, are there any propositions except subsection (f) in this bill that you refer to?

Mr. WELLS. I have already filed my objections to portions of section 3, where I think certain wording is not warranted by the record or by the report submitted by the committee. I have objected, and have made recommendations as to certain changes in paragraph (b) in section 5, and have submitted as a basis for those recommendations the rule which was drafted by the Solicitor of the Department of Agriculture in connection with the grain exchanges. I have objected to the proviso in connection with subsection (e) of section 5.

Mr. MCLAUGHLIN of Michigan. Mr. Wells, you told of what you conceive to be the evil of that method of doing business, and it was the distribution among farmers, buyers, or sellers or whoever they are, who are not members.

Mr. WELLS. I think that is a great evil.

Mr. MCLAUGHLIN of Michigan. This proviso applies to the distribution of excess earnings among the bona fide members of any such cooperative association.

Mr. WELLS. Very true; but there is no definition of what a cooperative association is or what constitutes membership. If I want to run a cooperative association, I can charge a dollar apiece for membership, and I could distribute my earnings then to those people. Their investment would be $1 and they might save one-fourth of a cent a bushel by having their marketing done through me, which I claim is unfair competition and would break down the commission rule. I am not a commission merchant, Mr. McLaughlin, and it does not affect me one particle, but I do know what happens in markets where the commission rule is broken down. I have seen that happen in the Northwest.

Mr. KINCHELOE. I do not know whether I understood you a while ago or not, but I understood you to say that this farmers organization that you spoke of was now a member of this board.

Mr. WELLS. The Northwest Wheat Growers Association?

Mr. KINCHELOE. Yes.

Mr. WELLS. They have been negotiating for membership and are entirely satisfied with the terms upon which they can secure membership.

Mr. KINCHELOE. If they go into your association, they are the owners of the wheat, and the wheat is pooled, of course, for the purpose of getting a better price.

Mr. WELLS. Yes; that is what they hope to do.

Mr. KINCHELOE. In other words, it might be that the commission is reflected in the price of the wheat by reason of their going into it.

Mr. WELLS. Yes, sir.

Mr. KINCHELOE. Will they handle any wheat for any other farmers who are not members of that organization?

Mr. WELLS. No.

Mr. KINCHELOE. That will be one of your rules?

Mr. WELLS. No; we do not have to have a rule about that because the title to the wheat passes and they will advance to the producer an arbitrary amount, and then they divide up the proceeds after the grain is sold.

Mr. KINCHELOE. And that applies to only the members of that organization?

Mr. WELLS. Yes, sir.

Now, the Minneapolis Chamber of Commerce has other cooperative and farmers' organizations among its membership. There is the Farmers Grain Co., of Devils Lake, N. Dak., which has been a member since 1900; the Saskatchewan Cooperative Elevator Co. of Canada, which is the biggest cooperative grain company in the world and which has been a member since June, 1917; and the Farmers' Elevator Commission Co., which is a commission company formed by a number of country farmers' elevators, and they have been members since 1919.

Mr. KINCHELOE. Has the farm bureau ever made application for membership?

Mr. WELLS. No.

Mr. TINCHER. Mr. Chairman, I desire to move at this time that the chairman of the committee, inasmuch as we are going to close the hearings the first of the week, be requested to ask for the consideration of this bill in such form as we may amend it and report it out on Thursday.

Mr. RAINEY. Mr. Chairman, I do not see the need of such great rush on this bill. Heretofore, after the consideration of a bill, we have always appointed

a subcommittee to redraft and consider the bill and then send it back to the full committee so that we might consider it at length and make whatever amendments we deemed advisable, and I think from the testimony of Mr. Wells that this is a matter that demands considerable attention.

Mr. TINCHER. If we do not get the bill ready by that time, of course, then we will have to switch to something else.

Mr. MCLAUGHLIN of Michigan. I have not any choice among the different bills, but this is a matter of great importance and I would like to have it thoroughly studied in the committee, whether it is to come up Thursday or at any other time.

Mr. CLAGUE. Can we not leave that open until we hear Mr. Jacobson?

Mr. TINCHER. All right; I will withdraw my motion until we hear Mr. Jacobson, but I am going to use every effort I can to get the bill up as quickly as possible.

STATEMENT OF HON. CARL R. CHINDBLOM, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF ILLINOIS.

Mr. CHINDBLOM. Mr. Chairman, will you permit me to make a little statement for the record?

There are other gentlemen here from Chicago who are intensely interested in this legislation. They have not taken up the time of the committee, but I would like the record to show that they have come here and have attended the hearings and they join in the views which have been expressed by Mr. Gates and Mr. Wells. I refer to Mr. Henry A. Rumsey, one of the directors of the Chicago Board of Trade and for many years mayor of the city of Lake Forest, in the district which it is my honor to represent; and Mr. L. L. Winters, also of Chicago, who is also a director of the Chicago Board of Trade.

Mr. KINCHELOE. I think that is perfectly proper, and I would like to ask whether they have any statement of their own they would like to put in the record.

Mr. WINTERS. We have no statement to make except we represent the Board of Trade officially and we subscribe to what has been said here.

Mr. KINCHELOE. I would be willing to give you the further courtesy of filing any statement you desired to submit.

Mr. MCLAUGHLIN of Michigan. If you have anything additional to say that has not been covered, we will be pleased to have your statement.

Mr. WINTERS. You gentlemen have been very patient and Mr. Wells and Mr. Gates have covered the situation very thoroughly, we think, and there is nothing we could add to their statement.

Mr. CHINDBLOM. I would like to introduce Mr. Rumsey to the committee, if I may.

Mr. MCLAUGHLIN of Michigan. We will be glad to have any statement you have to make for the record.

Mr. RUMSEY. We have no additional statement to submit, but we would like to simply concur in the statements heretofore made by Mr. Gates and Mr. Wells.

(The committee thereupon adjourned until Monday, June 12, 1922, at 10 o'clock a. m.)

COMMITTEE ON AGRICULTURE,
HOUSE OF REPRESENTATIVES,
Monday, June 12, 1922.

The committee met at 10 o'clock a. m., Hon. Gilbert N. Haugen (chairman) presiding.

There were present: Messrs. Haugen (chairman), McLaughlin of Michigan, Purnell, Riddick, Tincher, Williams, Thompson, Clague, Clarke, Jacoway, Rainey, Aswell, Kincheloe, and Jones.

There were also present: Messrs. Halvor Steenerson, Andrew J. Volstead, and Walter H. Newton, Representatives in Congress from the State of Minnesota.

The CHAIRMAN. The committee will come to order.

Mr. NEWTON. Mr. Chairman, I regret to advise the committee that Mr. Jacobson was unable to leave St. Paul so as to arrive here on Monday, and he was advised that somebody would have to be here on Monday, so he sent Mr. Quist, who is chief of the weighmasters, and one other gentleman to represent him.

They left Minneapolis on Saturday night so as to be here this morning. I have not heard from them, but Mr. Clague advised me when I got into the committee room this morning, that he had received a wire from those gentlemen that there is a washout some place on the road that has delayed them, and they will not be able to be here until to-morrow morning. Personally, I have not heard anything from them, but I left my office to come over here thinking that probably they had come direct to the committee room. But Mr. Clague advises me he has heard the reasons for their not being here, and that they will not be able to be here until to-morrow morning.

Mr. TINCHER. I do not think there is any controversy about this matter. Mr. Clague has a telegram that is explanatory.

Mr. CLAGUE. Mr. Chairman, Mr. Jacobson could not possibly come, but he wired me on Saturday, saying this [reading]:

Hon. FRANK CLAGUE,
Congressman, Washington:

Impossible for me to attend hearing Monday on account of my health, but Mr. Quist, State weighmaster, and Mr. Thompson, supervisor of scales, will be at your office Monday morning direct from the train, so keep the hearing open until they arrive. We are opposing the interference of grain weighing and nothing else; seems you ought to be able to strike that part of it out.

O. P. B. JACOBSON.

And then this morning, about 30 minutes ago, I got this telegram from Chicago [reading]:

CHICAGO, ILL.

Hon. FRANK CLAGUE,
House of Representatives, Washington, D. C.:

Washouts delayed us 12 hours; reach Washington, B. & O., 9 a. m. Tuesday; have statements to file with committee; urge amendment H. R. 11843 by striking out "approved by the Secretary of Agriculture for the purpose," as now in lines 15 and 16, paragraph (a), section 5.

P. P. QUIST.

Now, on page 6 of the bill, what we want and what our railroad and warehouse commission asks is that on line 13 on page 6 of the bill strike out all after the word "grain"—strike out all the balance of that section—and then substitute the language just the same as it is in the old bill; that is, in the former grain-future bill insert these words "and having recognized official weighing and inspection service."

Now, there has never been any complaint, so far as I have heard, in the Northwest or any place else where they have future trading in grain, about this weighing. We have official State weighing in Minnesota, and I think that is true of Chicago and all these future markets. Now, we are opposed and vitally opposed in having in this any way taken from the State and having it put in any way under the Secretary of Agriculture, so that the Secretary of Agriculture could come in and interfere with our State weighing. And all we ask is that the markets be approved by the Secretary of Agriculture and that we have our official State service.

Now, Mr. Volstead is here and I would like to have Mr. Volstead say a word to the committee on this matter.

Mr. RAINEY. Mr. Clague, in your weighing has the Secretary of Agriculture supervision of your weighmasters?

Mr. CLAGUE. No; not of the weighmasters; that is under the State supervision. As I say, I never heard a complaint as to these weighings. The weighings are accepted by the railroad companies, and are universally accepted everywhere. We want official weighing, and we have got it, and it is right there at home, where if there is any fault to be found with the weighing it can be settled.

Now, if the committee feel that they can accept that amendment, I will not ask the committee to delay these hearings; but if the committee feels that they would like to hear these gentlemen, I will ask that the hearings be continued until to-morrow.

Now, I would like to have Mr. Volstead, who is specially acquainted with the work there, make a statement to the committee.

Mr. TINCHER. In connection with your statement, Mr. Clague, why not ask leave to insert the statement of these gentlemen in the hearings?

Mr. CLAGUE. Yes; I will ask leave, if the committee does not continue these hearings, to have inserted in the hearings the statements of Mr. Quist and Mr. Thompson, if I may insert those to-morrow. All we ask is that the bill be amended by striking out the approval by the Secretary of Agriculture.

Mr. CLARKE. May we have the advantage of those statements before the bill is reported?

Mr. CLAGUE. I will hand them in just as soon as possible.

Mr. CLARKE. I suggest that immediately after you get them that you have copies made and turn them over to the members of the committee.

Mr. CLAGUE. I will be glad to do that.

The CHAIRMAN. The only thing they are contending for is what you have mentioned?

Mr. CLAGUE. Yes; and I have a letter from Mr. Putman, one of the railroad and warehouse commissioners, and he states that that is the part they are vitally objecting to.

The CHAIRMAN. We will hear Mr. Volstead, if he cares to make a statement. I have received the following telegrams from Minnesota:

MINNEAPOLIS, MINN., *June 10, 1922.*

Hon. G. N. HAUGEN,
House of Representatives:

I regard it of absolutely vital importance that our State railroad and warehouse commission be heard by your committee on grain futures act which is now before you, before the matter is disposed of. They can not possibly come before June 27. Please arrange to have them heard at that time or immediately thereafter. Will much appreciate your cooperation, as I am sure it is in interest of the whole country because of importance of measure.

J. A. O. PREUS,
Governor State of Minnesota.

ST. PAUL, MINN., *June 9, 1922.*

GILBERT HAUGEN,
Congressman, Washington:

Railroad and Warehouse Commission of Minnesota desires to present full data in reference operation of weighing department of the State before Agricultural Committee in connection with 11843 due to press of business and court cases impossible for commission to be present before June 27; respectfully request date for hearing set on this bill before your committee as soon after 27th as possible.

O. P. JACOBSON, *Chairman.*

ST. PAUL, MINN., *June 10, 1922.*

G. N. HAUGEN,
Member of Congress, Washington:

Impossible for me to attend hearing Monday on account of my health. Our State weighmaster and supervisor of scales will leave for Washington to-night and arrive Monday morning. Our commission are not opposing Tincher bill in regard to futures trading. What we are opposed to its interfering with our State rights in weighing grain.

O. P. B. JACOBSON.

STATEMENT OF HON. ANDREW J. VOLSTEAD, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF MINNESOTA.

Mr. VOLSTEAD. Let me say in connection with that that I think there is a general feeling on the part of the Members of the House and on the part of the country generally that we ought not to take over any more activities on the part of the National Government than necessary.

Now, for many years our State has taken a great deal of interest in trying to secure fair weighing and fair inspection, and it seems to me that where the States does act we ought not to interfere, unless there is a special reason for it.

Now, if the State weighing has been provided and it does burden commerce—I mean interstate commerce—discriminates against interstate commerce, it is a familiar rule with lawyers that the courts will readily set those actions aside.

It is one of the things that we all know as lawyers, so it seems to me there is no necessity of undertaking to turn this whole thing over to the Federal Government. Let the Secretary of Agriculture work in cooperation with the States wherever it can be done without injustice to your commerce.

I hope that the committee will see fit to adopt the amendment that has been suggested. I am not able to see how it can possibly injure anyone.

Mr. KINCHELOE. Let me ask you this, Mr. Volstead: I assume you are familiar with section 5 of this original act; that is, the provision that the Secretary of Agriculture is authorized and directed to designate boards of trade as contract markets when, and only when, such boards of trade comply with the following conditions and requirements, one of which is section (a). Suppose it turns out that the weighing on any board is not satisfactory to the Secretary of Agriculture and the dealers on the board, what I want to know as a lawyer is whether you think the Secretary of Agriculture under this original act here would have any power to take any action in the matter.

Mr. VOLSTEAD. I do not think he would have any power, unless there is a discrimination against interstate commerce or if it burdens interstate commerce.

Mr. KINCHELOE. Then it is a power to take this weighing from them?

Mr. VOLSTEAD. I think so. I have not studied it.

Mr. CLARKE. According to the hearings, there isn't any dissatisfaction with the weighing.

Mr. KINCHELOE. No; I was putting this as a hypothesis.

Mr. VOLSTEAD. Our legislature and the people up there are very anxious to have this, and we never would do anything to interfere with the business.

Mr. KINCHELOE. What do you think of that, Mr. Tincher, as a lawyer?

Mr. TINCHER. I agree with you.

Mr. MCLAUGHLIN of Michigan. This weighing has been satisfactory?

Mr. VOLSTEAD. Yes; it always has been, so far as I know.

Mr. MCLAUGHLIN of Michigan. For how long a time has that been the case?

Mr. VOLSTEAD. For 25 years, at least. Mr. Steenerson probably knows more about that than I do.

Mr. STEENERSON. For at least that long.

Mr. CLARKE. There has not been any dissatisfaction expressed in the record.

Mr. TINCHER. We all recall the reasons given by Mr. Morrill, that some places had applied for the service that did not have any inspection service at all.

Mr. MCLAUGHLIN of Michigan. Are there any places that are contract markets, or that can reasonably ask to be made contract markets, where it is not satisfactory?

Mr. VOLSTEAD. If it is a matter of getting satisfactory weighing, we can trust the State government as well as the Federal Government, where they are as much interested in getting fair weighing, if not more interested, than the Federal Government.

Mr. MCLAUGHLIN of Michigan. I have been told—I think I am right about it—that that has been made an issue in politics in Minnesota.

Mr. VOLSTEAD. The weighing has never been in issue in Minnesota.

Mr. CLAGUE. It has never been an issue. I dare say there is no farmer in Minnesota that has made a complaint. There would be complaint, and it would be an issue if it were taken over by the Federal Government.

Mr. MCLAUGHLIN of Michigan. My information was that it had existed a long time ago, and the State took it over and handled it to the satisfaction of all the people.

Mr. CLAGUE. There was a time, before the State took it over; yes.

Mr. MCLAUGHLIN of Michigan. I am asking how long it was when it was not satisfactory to all the people.

Mr. CLAGUE. This has been in operation for 25 years, to my knowledge. I think Mr. Steenerson can give it more accurately. How long has it been in operation, Mr. Steenerson?

Mr. STEENERSON. About 30 years. And about this political issue—it was an issue before the State instituted a weighing service, but never since. Both parties and everybody has been agreed as to the State weighing and the State inspection service; they all agree that the State weighing and State inspection service has been sufficient, and it has never been an issue since that time.

Mr. MCLAUGHLIN of Michigan. I do not have in mind any particular date when it was a political issue, but I had in mind that they had stirred up the State considerably at one time, and the State took hold of it.

Mr. STEENERSON. That is the reason it was done. There was a complaint about the brass kettle, and several other instrumentalities that were used. But after the State took it over, there was never any issue about it politically; and all this talk that it was an issue is a mistake. We have all been satisfied.

Mr. JONES. Let me ask this question of Mr. Volstead, or some one. Mr. Volstead, has there ever been any complaint, since the State took it over, that special preference was given to the people of the State over the people who shipped in from outside of the State?

Mr. VOLSTEAD. Never, so far as I know.

Mr. JONES. No complaint of any kind?

Mr. VOLSTEAD. There has never been any complaint of any distinction being made between the people outside of the State and those residing in the State. The same officers do the weighing and the service is under the same officials.

Mr. JONES. And the service is the same, wherever it comes from?

Mr. VOLSTEAD. Yes; and as a rule they do not know where it comes from—whether from within the State or from outside.

Mr. TINCHER. There is no provision in this bill that the Government weigh the grain. It is not contemplated that the Government weigh the grain. It is different from the packer control act. It is a question what the Secretary of Agriculture can demand. I have been assured there is no thought of trouble with the authorities.

Mr. MCLAUGHLIN of Michigan. Does it occur to you, Mr. Volstead, that there are some cases where it is not satisfactory and changes ought to be brought about, and that this would take it out of the power of the Secretary of Agriculture to interfere in any way?

Mr. VOLSTEAD. Oh, if it is official it must mean it must be under a State law of some kind. Now, it seems to me there could not be any danger in this, because the State courts would control; and if it interfered with interstate commerce or burdened interstate commerce, then the old, familiar doctrine is that the courts will immediately correct it.

Mr. MCLAUGHLIN of Michigan. There are some large markets—St. Paul has a big market—and they ask to be relieved of Federal supervision as to weighing. There is something in the packer control act which would seem to give the Federal Government authority to see that the weighing is properly done. Now, there are a great many stockyards in the country—a great many of them—and a great many of them ought to be regulated. And if we start out by taking the hands of the Federal Government of the weighing of grain and say it is properly a State function, and something which the Federal Government ought not under any circumstances to interfere with, what will we say to the demand that is being made—and it is being made right now—that the Federal Government should take no hand in the weighing of live stock?

Mr. VOLSTEAD. I think that is true. Wherever there is no official weighing—wherever it is not weighed under some State law—I think the Federal Government ought to step in. But it does seem to me that Congress should trust the State to pass some decent law and enforce it decently.

Mr. RAINEY. Suppose they do not do it?

Mr. VOLSTEAD. Then you have recourse to the courts.

Mr. RAINEY. Do I understand that this takes place only at places where there are future markets?

Mr. CLAGUE. This bill only applies to the future markets, and there are only seven of them.

Mr. TINCHER. Most of the weighing takes place at other places, anyhow.

Mr. CLAGUE. The stockyards are an entirely different matter.

Mr. KINCHELOE. Let me get the attention of the committee for a minute. Mr. Morrill asked for something, because there is a little board of trade in one of the Southeastern States that applied to be made a contract market, and it was refused because they did not have the facilities. Now, this act provides, in the latter part of paragraph (a) of section 5, "and having recognized official weighing and inspection service." I think under that act the Secretary of Agriculture could refuse to designate any board of trade as a contract market, and give that as his reason. I do not know whether you lawyers agree with me or not. But if it did have official weighing service, and if it should turn out that it was unsatisfactory—so unsatisfactory that it was unfair, I believe under the general powers of this act the Secretary of Agriculture could say to them, Notwithstanding the language of this act, if you do not correct this, I will withdraw you as a designated contract market.

Mr. MCLAUGHLIN of Michigan. I doubt that.

Mr. KINCHELOE. If he has the power to designate, he has the right to take away that designation for cause.

Mr. MCLAUGHLIN of Michigan. Under the authority which the act gives him.

Mr. JONES. It says: "When located at a terminal market upon which cash grain is sold in sufficient volumes and under such conditions as fairly to reflect the general value of the grain and the difference in value between the different grades of grain."

Mr. KINCHELOE. And then it goes further and says, "And having recognized official weighing and inspection service."

I did not clearly get Mr. Morrill's contention. I am not passing on this amendment now at all. So far as Mr. Morrill is concerned, he did not make that clear to me.

Mr. NEWTON. Mr. Kincheloe, may I ask, in this State where this question was raised, did they have any official State weighing?

Mr. KINCHELOE. I do not think they did have any official weighing.

Mr. NEWTON. Then I do not think it applies at all.

Mr. KINCHELOE. I am not passing on this amendment now, but if they did have sufficient weighing service, I believe if in the future it finds out that it is unjust, under his general powers he could go to that market and say, We will withdraw you as a contract market. I mean, under the original subsection (a) of section 5.

Mr. NEWTON. It seems to me if it can be proven under the original act that there is a recognized official weighing service, that then that portion of the law has been complied with. But this goes further than that.

Mr. KINCHELOE. I understand that. I am talking about the original act.

Mr. NEWTON. This says all of that. It may be recognized, but nevertheless it must be with the approval of the Secretary of Agriculture.

Mr. MCLAUGHLIN of Michigan. Suppose, now, that some time in the future, as this act runs along throughout the years, there is no official weighing service at some of these markets, and you strike out from this bill all reference to control by the Secretary of Agriculture, what is going to happen at those markets? They have no official weighing service, and nothing recognized; the Secretary has no right to interfere, and what are you going to do?

Mr. CLARKE. Congress will rise up and attend to that.

Mr. NEWTON. I presume there would be legislation, as Mr. Clarke suggests, or there would be some amendment which would permit the Secretary to bring in something under which there could be a revocation of the original designation of the market. That would be done under the original act.

Mr. CLAGUE. It would not apply to the original act. This has got to be where grain is sold in sufficient volumes to reflect the values and differences in grades.

Mr. TINCHER. Let me suggest this: This is a matter that will come up on the consideration of the bill. Let us get through with the witnesses, and then take up the bill. Is there anything more you wanted to say, Mr. Volstead?

Mr. VOLSTEAD. No; I believe I have said all I care to say.

Mr. TINCHER. Is there any other gentleman here who wants to be heard?

The CHAIRMAN. Mr. Newton, are any charges made for the weighing?

Mr. NEWTON. It is my impression there are not, Mr. Chairman. I would not want to state that as a fact. Mr. Steenerson, I think, knows better than I.

Mr. STEENERSON. I think there is a charge.

Mr. JONES. It is one charge for weighing and inspection.

Mr. STEENERSON. Likely that is true. It is considered one transaction.

Mr. NEWTON. I may be mistaken, but I think it is all included in the inspection charge.

Mr. STEENERSON. That may be. But it strikes me that is purely academic. There is no market likely to be designated as a public market, as pointed out by Mr. Clague, that does not have a sufficient weighing service. It is purely a fanciful thing to suppose such a thing, that they would not have sufficient weighing service.

The CHAIRMAN. For the record, the representative of the department says that charges are made at all the markets; a reasonable charge.

Mr. STEENERSON. I hope that the committee will modify that section, because without it I don't know how we can operate. The people are very sensitive about this. They do not want any opportunity for the Federal Government to take away this weighing service, and if you should leave that language out, I am satisfied that the State authorities would be opposed to the whole bill.

Mr. McLAUGHLIN of Michigan. The same conflict exists—the same difference of opinion exists between the State authorities and the Federal authorities in St. Paul under the packer control act. Would our action here this morning be a precedent for asking action in the packer control act? Everything may be all right in St. Paul, but there are a lot of packers throughout the country.

Mr. CLAGUE. There may be a lot of packers throughout the country, but there are very few future terminal grain markets. There are only seven in the United States.

Mr. McLAUGHLIN of Michigan. What was the basis of the complaint in the stockyards controversy in Minneapolis, as to whether the State government or the Federal Government should do the weighing in the stockyards?

Mr. STEENERSON. The Secretary of Agriculture said that under the law it was his business—under the act, it was his business to take it over. The State commission believed it was its business. And they did not want their jurisdiction wiped out. They wanted to continue the weighing service. I do not understand there was any other controversy except a controversy as to jurisdiction. Of course, there were a large number of employees.

Mr. TINCHER. Mr. Chairman, I move we proceed to a consideration of the bill section by section.

(The motion was seconded, and duly carried.)

Mr. RAINEY. I move, Mr. Chairman, that we go into executive session.

(The motion was duly seconded and carried.)

(Whereupon, at 11 o'clock a. m., the committee proceeded to the consideration of the bill in executive session.)

(The following statements were submitted as permitted by the committee:)

STATEMENT OF P. P. QUIST, STATE WEIGHMASTER FOR THE PAST 21 YEARS OF THE MINNESOTA RAILROAD AND WAREHOUSE COMMISSION AT MINNEAPOLIS, MINN.

The Minnesota Grain Weighing Department was created by the State Legislature in 1885, and placed under the supervision of the railroad and warehouse commission. This commission, consisting of three members, are elected directly by the people for a term of six years, one commissioner elected every two years, the other two holding over. All appointments in the grain department are made by the commission, and employees are carefully selected, with due regard to age, character, intelligence and general fitness, for the position to which they are assigned. The compensation of the employees varies with the responsibility attached to the work in which they are engaged, and all must take an oath of office and furnish a surety bond of $5,000 for faithful performance of their duties under rules laid down for their government, which rules are made by the commission. While there is no civil service law in our state, yet the best of civil service is practiced, as removals have rarely occurred, and then only for violation of rules and incompetency. Many of the employees are still in the service who were identified with it at the time of its inception, their trained judgment, from years of experience, rendering their service valuable. This is especially true of the grading of grain.

The Minnesota Grain Weighing Department was organized as a medium between buyers and sellers of grain. Its purpose is to furnish true grades and accurate weights that are independent of either party and to aid in an equitable adjustment of disputes in so far as correct weights are concerned. The department consists of a chief weighmaster, a clerical office force, and weighers stationed at the mills and elevators; also scale experts and yard watchmen.

THE WEIGHING.

Before any final accounting can be made by the commission merchant to a country shipper, or settlement made between buyer and seller, the weight of the grain must first be ascertained. For the purpose of determining this weight, State weighers are stationed in the terminal mills and elevators, who take charge of the cars on their arrival at the respective stations and carefully weigh the grain before it is delivered into the possession of the buyer. The State weighers must make a careful inspection of the general condition of the cars as they are received and note any bad conditions found. A record of the seal number is also taken. The car is opened and shippers' weight cards removed. The weighing is done either on track scales or large hopper scales located at each mill or elevator. In case of track scale, the loaded car is placed on the scale and the gross weight taken. After the car has been unloaded it is weighed

back empty to determine the net weight. In all cases the car is detached from other cars during the weighing process. In case of hopper-scale weight, the contents of the car is unloaded into a receiving pit and elevated directly to the garner (a large receiving hopper located just above the scale hopper). After the scale has been properly balanced and the hopper valve closed, the grain is drawn down from the garner into the scale hopper and weighed, usually in one draft, unless it is a very large load, when two drafts are taken.

At the larger elevators where the weighing is done in the cupola, two men are employed by the State, the one being downstairs called a supervising weigher, who sees that the cars are properly swept and notifies the weigher upstairs, either by speaking tube or telephone, that the grain is ready to be weighed.

All scales over which State weights are given are equipped with type registering beams, so each weight is double checked. The weight is first read from the beam and entered into a book by the State weigher. He then inserts a specially prepared card in the recording beam, presses a lever, and the weight is stamped on the ticket, and compared with the entry in the book before he leaves the scale. Since an incorrect record can not be obtained from a type registering beam, it is practically impossible for errors to enter into the work of weighing under the present system. Another check that tends toward accuracy is the fact that all through this weighing operation the State weigher has not been alone in the work, for the house weigher has also been present, which results the two men are able to compare.

Duplicate daily reports are made by the weighers at the close of each day's work. These, together with reports of car conditions and seal records, type register tickets and weight cards, are forwarded to the State weighmaster's office, either by mail or messenger. It is necessary that reports be on hand at 8 o'clock a. m. on the day following the weighing.

After the type-register tickets are checked with the weigher's reports by the office clerks, an official certificate of weight is issued, bearing on its face the car number, initial, contents and State weight, together with the date and name of weighing station. This certificate is stamped with the seal of the State weighmaster and forms the basis of settlement between the shipper and buyer in the matter of weights. The railroads also base the freight charges on the State weight. Should bad-order condition be registered against the car this fact is noted on the weight certificate. Certificates are issued without expense to any interested party.

Scale experts are employed, whose duties are to test scales used by the State department and keep them adjusted to the Government standard of weights. After the scale is tested, it is sealed to prevent willful or accidental changing of the scale levers without the knowledge of the department. The State supervision is not confined to the testing of scales, but takes up the details of proper scale construction, elevating machinery and all apparatus that enters into the handling of grain, before it is finally weighed.

Another very important branch of the weighing department is the system of patrol service in the terminal railroad yards, whereby the grain cars passing through the terminal yards are scrutinized to see if leaking. Leaky cars are often found and reported by the special watchman, which would not have been found had they not been seen while in motion, for cars which leak, more or less, while being bumped about often show no leak when set for unloading, or while standing still.

The Minneapolis weighing department supervises the handling and weighing of grain at 78 mills and elevators in Minneapolis, and 30 mills and elevators scattered throughout the Northwest, and weigh annually from 225,000 to 350,000 carloads of grain. To keep the various mills in Minneapolis alone in operation requires about 450 carloads of grain every 24 hours when the mills are operated to their regular capacity. A large percentage of the grain shipped to this market is stored in the terminal elevators when grain receipts are heavy. This grain supply is drawn upon as needed for grinding, when it is weighed out, loaded into cars, and forwarded to the mills, where it is weighed again when unloaded. Each car carries a card showing the loading weight, and the name of the elevator where it was loaded. The loading and unloading weights are compared, and any discrepancy above normal shrinkage means an immediate investigation to locate the difference. It is by such a check that scale defects are at once discovered and corrections made. It is also by such cross-town movement of grain that a check can be made on the efficiency of the weighing service, as the responsibility for both weights rests on the one weighing department. I submit herewith a statement showing the cross-town handling of grain in Minneapolis for a crop year, which statement speaks for itself.

STATEMENT OF CLEAR RECORD CARS USED IN THE CROSS-TOWN MOVEMENT OF GRAIN FOR THE CROP YEAR WHICH BEGAN SEPTEMBER 1, 1919, AND ENDED AUGUST 31, 1920.

Total number of cars handled, 13,988; average shrinkage, 53¼ pounds per carload. When taking into consideration that from 10 to 15 pounds are taken from each car by the samplers for grading purposes, the average shrinkage is less than 40 pounds per carload.

The weighing department, while performing its function of weighing and certifying to weights of grain, also provides information to shippers, who assume they have suffered a loss of grain in transit, due to leaky cars or other causes. For this purpose, an office in charge of efficient and experienced persons is provided. Here all the seal records and other essential data are kept on file, and any person desiring to have an investigation made as to the physical condition of the car and the seal protecting its load need only to file an application to receive a complete description of the car from the time it was first sampled by the inspection officials until it is set for unloading at the mill or elevator. This information embodies the number and kind of seal on the car when it was sampled for inspection and reinspection, also the seal recorded by the sampling bureau in taking samples for the commission firms for selling purposes. These samplings often occur three or four times, and every transaction is recorded and a record kept of each seal broken and the kind of applied. All this information is recorded and made a part of the records of the office.

From these records a complete report is furnished to the applicant claiming a shortage and is used by him to substantiate his claim on the carrier. There has been a decided improvement in the handling and weighing grains at the terminal markets during the past 20 years. The small scale with its plain beam has been discarded, and in its place we find the 1,600 or 2,000 bushel hopper scale, with type registering beam. The elevator leg, with its turn-head, whereby the grain could be diverted, has been replaced by the stationary turnhead, which means that the grain from the unloading pit can not be diverted before it is weighed. The small track scale resting on shallow wood foundation has given way to the modern 150-ton scale, built on solid concrete.

In connection with the weighing department, a registration bureau is maintained which compiles and keeps accurate account of the grain received and loaded out of terminal elevators. This bureau certifies to the amount of grain in storage and issues warehouse receipts for it, which are used by the owners of the grain as collateral in borrowing money, and these warehouse receipts are considered by the banks as the highest grade of security, and they are of great benefit in raising the vast sums of money required to handle the crop.

I will say in conclusion, that it is the constant aim of the State weighing department to furnish true and exact weights, keep true records of seal and car conditions, so that such information may be available to all interested parties. The Minnesota grain department enjoys the confidence of the grain trade, and it would not be to the best interests of the producers and shippers of grain to abolish this service that has taken so many years to establish.

Respectfully submitted.

P. P. QUIST, *State Weighmaster.*

STATEMENT OF W. E. THOMPSON, STATE SUPERVISOR OF SCALES FOR THE MINNESOTA RAILROAD AND WAREHOUSE COMMISSION.

In appearing before your committee, I wish to present a statement from an experience covering 21 years of my connection with the Minnesota Railroad and Warehouse Commission in its carrying out the provisions of the grain laws of the State of Minnesota enacted in 1885.

Our State has had a grain-inspection and a grain-weighing service since August 1, 1885, and as a consequence of the services rendered by bonded State grain inspectors and State grain weighers, the terminal markets of Minnesota have enjoyed a distinction of a splendid reputation all these years for the accuracy of weights in its terminal elevators and the fairness of its grades.

I am concerned for our Minnesota Railroad and Warehouse Commission with the maintenance of the weighing service in grain terminal elevators throughout our State, under and in conformity with our State laws, and I believe that H. R. 11843, section 5, subparagraph (a) should be amended to allow of the continuance of that State regulatory and supervision service.

In connection with this, allow me to say that my first experience as one of the commission's employees was as a weigher of grain in 1901, later holding other positions under the commission, at their request, in the grain service, and since 1908 as actively in charge of track scale supervision, later of supervision over all of the scales of the larger capacities in the State of Minnesota for the commission; hence my connection with the grain-weighing service has been a continuing one since 1901, or a period of 21 years, and in all of that time it has been my observation that State bonded weighers actually perform the weighing service, and that as such they are a neutral, noninterested body of men, functioning in the establishment of a weight, which is acceptable by the seller, by the purchaser, and by the railroad companies in freight settlements. Minnesota weights are recognized over the entire United States as being accurate without question, if we can accept statements of the grain trade in other markets and of the railroads and the producers and grain-handling public, and they are accepted as of a high character and beyond reproach.

In addition to the actual weighing service performed by bonded employees, the supervision provided in our grain laws of the State of Minnesota goes to a safeguarding of the grain from the time it reaches a terminal market until it has passed to the miller for grinding purposes.

The freight yards, into which the cars of grain come, are policed by the State weighing department of the commission; the grain cars are policed through to the actual weighing of the grain into the terminal elevators; conditions of the cars are noted and reported, for the protection of the shipper; the appliances used in the receiving of the grain into an elevator and the scales therein, whether they are railroad track scales or hopper scales, in the cupola, are under the constant and daily inspection of the State weighers operating them.

In addition to this the scale department maintains a scale inspection force of eight inspectors, giving all of our scales two annual, regular inspections and tests, with such additional inspections and tests as become necessary by reason of complaints or variations in weights between terminal elevators and mills or between two State shipping points, whether located in the same terminal or not, and the scales are tested on the motion of the department whenever there appears to be variations in weights between any two points.

Under section 5, subparagraph (a), lines 15 and 16, appear the words "approved by the Secretary of Agriculture for the purpose." It is not known what the import of this particular phraseology will mean. We feel that it will mean that it will abolish the State weighing service of the State of Minnesota, and if that is done it will mean that the chamber of commerce at Minneapolis and the board of trade at Duluth, constituted of grain handlers in the shape of elevator and mill owners, commission merchants, and grain traders, will of necessity be obligated to do this weighing. Somebody must perform this function, and certainly it can not be contended that the interested party in the receipt and sale of this grain should properly be the one to perform this function. These markets appear to me to be happy in their ability to furnish a State certificate of weight, issued by a bonded, neutral State weigher, who neither knows who owns or who is to receive the grain he is weighing. In my opinion it would be the height of unwisdom to abolish that service.

I do not find that in the bill there is provided for a Federal service, which shall be the equivalent of the State service that has functioned all these years, and with which shippers from Northwestern States, including Montana, North and South Dakota, Nebraska, Kansas, and frequently Iowa, have become accustomed, by reason of the fact that they have, in a more or less large volume, shipped grain to the Minnesota terminals. It is my contention that this is properly a State function, exercised as a part of the State's police power, and as such ought not to be objectionable to the Secretary of Agriculture in the carrying out of the other provisions proposed by this bill.

The Minnesota weighing service, as required by our Minnesota Railroad and Warehouse Commission, in conformity with our State laws, is apparently very well thought of by industries doing business in other States, and because of this fact the Minnesota commission has made special weighing contracts, furnishing Minnesota bonded State weighers to perform the weighing service at two different mills in North Dakota, one mill in Iowa, one mill in Wisconsin, and has even established its weighing service, through the same kind of a special contract, at Portland, Oreg. In each of these cases where this service has been established outside of the confines of the State of Minnesota it has been upon a special contract between the parties involved and because of a guaranty of and a payment to the State of the total expenses involved in rendering the service.

There should be no objection to the establishment of such a weighing service by any State, which will carefully and conscientiously carry out the duties imposed by laws similar to those of Minnesota. In this connection, during my period of service with the Minnesota commission it has been my observation that railroad and warehouse commissioners or grain commissioners from Montana, North Dakota, South Dakota, Nebraska, Kansas, and Missouri have repeatedly come to Minnesota for copies of Minnesota's forms and blanks and her laws, and my information, while not definite and positive as to the individual State, would lead me to the belief that in nearly all of these State mentioned legislation has been enacted incorporating the Minnesota grain-supervision laws.

Section 8747½f (sec. 7), page 1405, United States compiled Statutes 1918, provides that the Secretary of Agriculture may license inspectors for the grading of grain under such rules and regulations as he may promulgate. In this section the following wording occurs: "*Provided*, That in any State which has, or which may hereafter have, a State grain inspection department established by the laws of such State, the Secretary of Agriculture 'shall' issue licenses to the persons duly authorized and employed to inspect and grade grain under the laws of such State." Under this section the Secretary of Agriculture has licensed all of the grain inspectors appointed by the Minnesota Railroad and Warehouse Commission under the Minnesota laws.

Under the proposed subsection (a) of section 5, lines 15 and 16 of H. R. 11843, if the Secretary of Agriculture did not approve of the State weighing service, with its additional many points of supervision and regulation besides the actual weighing of the grain itself, it would seem that this would do away with all State supervision, and I submit the question, Would this not necessarily compel the chamber of commerce at Minneapolis and the board of trade at Duluth to establish this service that is now performed by the State through its body of neutral, noninterested, bonded State employees?

So far as this service relates to the mechanical elements involved in the weighing of grain, the scale inspectors of the scale department of the commission make in their two annual tests and in all other cases where elevators are visited a critical examination of the receiving pits, the receiving boots, the legs that elevate the grain to the hopper scales, the garners in which that grain is momentarily stored just immediately before it is weighed, and the hoppers of the scales themselves, which are located directly underneath the scale garners, and a complete physical examination and a complete and comprehensive test of the scales. These examinations are regularly made twice annually, and every possible safeguard is thrown around the mechanical elements involved in the terminal elevators to insure the accuracy of weights on all of the grain received at and shipped from them.

The same is true of those elevators and mills employing railroad track scales in the receipt and the shipment of their grain. In addition to the two regular tests and two regular inspections of all of this machinery, such additional tests and additional inspections are made as the scale department deems necessary, taking into consideration each day the daily movement of grain between State weighing points so that on any occasion of apparent discrepancies on weights between two points, inspections and tests of the scales involved and the elevators involved are immediately made by the scale department, which is in addition to the regular daily critical examination of these scales and the handling appliances used with the weighing of grain made by these bonded State weighers.

There are involved in the Minnesota grain-weighing service at all points approximately 130 different weighing stations and approximately 350 different scales over which grain is weighed, and I submit that the existing State machinery that functions through an extremely small cost per bushel of the grain weighed, and which does not and can not by the fact of its very low cost produce a burden upon interstate commerce, I submit that that State regulatory supervision should not be superseded by Federal regulation or Federal service. Prior to Federal regulation under the grain standards act, the fees established by the Minnesota commission fluctuated from 15 to 50 cents per carload. Since the operation of the department under the Federal act the fees are doubled. The Minnesota commission regulates the fees to the needs of the service, increasing or decreasing the fees in accordance with the volume of business to a point which will provide only sufficient revenues for operation. In this connection the average annual surplus of revenue over expenses has been $1,200. This covers a period of operation since August 1, 1885.

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